

EXPEDITED HANDLING REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35606

STATE OF MICHIGAN DEPARTMENT OF TRANSPORTATION
– ACQUISITION EXEMPTION –
CERTAIN ASSETS OF NORFOLK SOUTHERN RAILWAY COMPANY

**MOTION TO DISMISS OF
STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION**

ENTERED
Office of Proceedings

MAR 30 2012

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Public Record

I. INTRODUCTION

The State of Michigan Department of Transportation (“MDOT”) hereby moves the Surface Transportation Board (the “Board”) to dismiss the Verified Notice of Exemption concurrently filed in this docket, because MDOT’s proposed acquisition does not require Board authorization under 49 U.S.C. § 10901, nor exemption therefrom. For the reasons set forth herein, MDOT respectfully requests that the Board give expedited consideration to this Motion and issue a decision effective by May 31, 2012.

MDOT proposes to acquire certain physical assets of a Norfolk Southern Railway Company (“NSR”) rail line located in Wayne, Washtenaw, Jackson, Calhoun and Kalamazoo Counties, Michigan, that currently accommodates both freight and passenger rail service (the “Subject Line,” as more specifically described in the Verified Notice of Exemption filed in this docket). In connection with the proposed acquisition, MDOT would fund significant improvements on the Subject Line to provide for higher-speed intercity passenger rail service. MDOT would acquire neither the right nor the

ability to provide, control, or interfere with freight service on the line. NSR would retain an exclusive, irrevocable, perpetual, assignable, divisible, licensable and transferable freight easement on the Subject Line, and would continue to provide all common carrier rail freight service on the line. A Joint Operating Agreement between NSR and MDOT governing shared use and operations on the Subject Line (the "JOA"), attached hereto as Exhibit A,¹ would ensure no interference with NSR's provision of common carrier freight rail service on the Subject Line.

Given these facts, MDOT seeks a determination pursuant to *State of Maine, Dept. of Transp.—Acquis. & Operation Exemption—Me. Cent. R.R. Co.*, 8 I.C.C.2d 835 (1991) ("*State of Maine*") and its progeny that MDOT's acquisition of the physical assets of the Subject Line does not require the Board's authorization under 49 U.S.C. § 10901, nor exemption therefrom. Accordingly, the Board should dismiss MDOT's Verified Notice Exemption in this docket.

II. STATEMENT OF FACTS

MDOT is a state government agency and a non-carrier. The purpose of the transaction is to improve existing intercity passenger rail service, and maintain robust common carrier freight rail service on the line.² The Federal Railroad Administration ("FRA") has awarded two grants to MDOT under its High-Speed Intercity Passenger Rail Program totalling more than \$346 million, so that MDOT may acquire and improve

¹ The JOA will take effect upon the closing of the proposed transaction. JOA § 16.1.

² Pursuant to the JOA, Section 3.6, MDOT may permit the addition of commuter rail service on the Subject Line only after (1) completion of the intercity passenger rail capital improvements described in the JOA and (2) construction of additional capacity to accommodate the commuter rail service. Such construction shall not "delay or reduce available capacity" for freight operations on the Subject Line. *Id.*

the Subject Line to provide improve high-speed intercity passenger rail service between Kalamazoo and Dearborn, Michigan. The National Railroad Passenger Corporation (“Amtrak”) currently provides intercity passenger service on the Subject Line, and would continue to do so following the proposed transaction. MDOT’s acquisition of the Subject Line would enable 110 mph intercity passenger trains over Amtrak’s Wolverine Route, the most highly utilized route operating on the Chicago-Detroit-Pontiac corridor, and potentially the only route operated by Amtrak (outside the Northeast Corridor) designed for train speeds up to 110 mph.

NSR today operates approximately four through trains two to seven days per week and six local trains five to seven days per week over the Subject Line.³ Amtrak currently operates three daily round-trips of its Wolverine service (serving the Chicago-Detroit-Pontiac corridor) across the entire Subject Line and one daily round-trip of its Blue Water service (serving the Chicago-Port Huron corridor) using the Kalamazoo-Battle Creek portion of the line.

Pursuant to the MDOT-NSR Purchase and Sale Agreement dated October 4, 2011 (the “PSA,” attached hereto as Exhibit B), MDOT would acquire NSR’s right, title and interest in the right-of-way, trackage and other physical assets (such as signboard and

³ Pursuant to STB Finance Docket No. 35187, *Grand Elk Railroad, LL—Lease and Operating Exemption—Norfolk Southern Railway Company*, Grand Elk Railroad, LLC leases Botsford Yard and holds associated trackage rights on the Subject Line. Pursuant to STB Finance Docket No. 35410, *Adrian & Blissfield Railroad Company – Continuance in Control – Jackson & Lansing Railroad Company*, Jackson & Lansing Company holds trackage rights in and around Jackson Yard on the Subject Line. Additionally, NSR’s freight easement on the Subject Line is intended to connect with (a) Conrail’s Detroit-area shared assets area trackage at Townline; (b) NSR’s trackage rights, as successor to Conrail, over Canadian National in Battle Creek, Michigan; and (c) NSR’s trackage rights over Amtrak in Kalamazoo, Michigan.

fiber optics) associated with the Subject Line. NSR would retain an exclusive, irrevocable, perpetual, assignable, divisible, licensable and transferable freight rail operations easement, which would allow NSR to provide common carrier freight rail service to current and future customers, as well as interchange with and perform haulage services for all current and future freight carriers connecting with the Subject Line. *See* PSA, Exhibit A-5.

The JOA would govern capital improvements, maintenance, and day-to-day operations on the Subject Line, assuring that MDOT's ownership of, and modifications to, the Subject Line would not interfere with or unduly burden NSR's provision of rail freight service. In fact, planned improvements to the Subject Line would also benefit freight operations. The JOA would preserve NSR's current level of freight volumes and service levels on the Subject Line and provide NSR the right to require capital improvements as necessary to accommodate potential increases in freight service needs on the Subject Line. JOA § 3.

Pursuant to the JOA, MDOT would upgrade the Subject Line west of Ypsilanti, MI, to allow for use by both high-speed passenger and freight rail service. JOA § 3.4. Additionally, MDOT would cause the Subject Line east of Ypsilanti, MI to become a double-tracked mainline, with through, high-speed passenger lines using the south track and freight operations conducted on the north track. JOA § 3.5. The JOA would provide NSR with the right to cross over the south track to fulfill its common carrier obligations to serve existing or future customers located south of the mainline track.⁴

⁴ NSR could use the southern mainline track in the event of emergency or for required maintenance on certain freight exclusive use property, as the dispatcher reasonably

JOA § 3.2.3. The JOA would require MDOT and NSR to develop a capital improvement schedule, including transition periods, to ensure that construction would not unreasonably interfere with NSR's performance of freight rail service over the Subject Line. JOA § 4.4.

NSR would continue to dispatch the Subject Line until MDOT completes its modifications, at which time NSR and MDOT would conduct a phased transfer of dispatching responsibilities to MDOT's contractor. JOA § 9.1. The JOA would require the dispatcher to use sound dispatching principles, taking into account NSR's right and obligation to use the Subject Line for freight service and the expectation that passenger operations would generally use the southern-most track east of Ypsilanti.⁵ JOA §§ 3.4.1 and 3.5.1. The JOA would require MDOT to maintain the Subject Line to certain standards, including so as not to unreasonably interfere with the provision of Freight Rail Service, and the JOA would allow NSR to maintain the Subject Trackage should MDOT fail to provide such maintenance. JOA § 7.

III. ARGUMENT

A. State of Maine Doctrine

Under 49 U.S.C. § 10901, the Board has exclusive jurisdiction over the acquisition of a railroad line by a non-carrier, where common carrier rights and obligations also are being transferred. *Common Carrier Status of States, State Agencies*, 363 I.C.C. 132, 133

determines. JOA § 3.5.3. MDOT's passenger rail service provider could use certain portions of the northern mainline track for meets and passes, and other portions in the event of an emergency or to accommodate required maintenance on the southern mainline, but no passenger operations could occur on one segment of the northern-most mainline track adjacent to Wayne Yard. JOA § 3.5.4.

⁵ The JOA would not permit the dispatcher to expand passenger use beyond the parameters discussed *supra* in note 4. JOA § 3.5.4.

(1980), *aff'd sub nom. Simmons v. ICC*, 697 F.2d 326 (D.C. Cir. 1982). Under the *State of Maine* doctrine, the Board has consistently held for more than twenty years, in more than 60 cases, that “the sale of the physical assets of a rail line by a carrier to a state or other public agency does not constitute the sale of a railroad line within the meaning of 49 U.S.C. § 10901, if certain conditions are met.” *Fla. Dept. of Transp.—Acquis.*

Exemption—Certain Assets of CSX Transp., Inc., STB Finance Docket No. 35110, slip op. at 5. (STB served Dec. 15, 2010) (“*FDOT*”).⁶ These conditions are: (1) “the selling carrier must retain a permanent, exclusive freight rail operating easement, together with the common carrier obligation on the line,” and (2) “the terms of the sale must protect the carrier from undue interference with the provision of common carrier freight rail service.” *Id.* Under *State of Maine*, “the key question is whether the terms and conditions governing [the non-carrier’s] acquisition . . . and [the carrier’s] reservation of a freight rail easement meet the Board’s requirements for assuring that common carrier freight rail service can continue to be provided on these rail assets without interference.” *Id.*, slip op. at 11.

B. Analysis

MDOT’s proposed acquisition of the Subject Line from NSR satisfies all of the criteria of *State of Maine* and its progeny, and the Board should therefore dismiss MDOT’s notice of exemption in this docket under the *State of Maine* doctrine. MDOT would acquire certain real property and related improvements from NSR, but would not acquire the right to perform common carrier freight rail operations on the Subject Line.

⁶ A federal appellate court recently upheld the Board’s *State of Maine* doctrine. *Bhd. of R.R. Signalmen v. Surface Transp. Bd.*, 638 F.3d 807 (D.C. Cir. 2011).

The permanent and exclusive easement retained by NSR preserves its ability to provide or permit freight rail service to current and future customers on the Subject Line. As discussed above, the JOA would assure that MDOT's ownership of, and modifications to, the Subject Line would not interfere with or unduly burden NSR's provision of rail freight service.

State of Maine precedent permits the maintenance and dispatching of the Subject Line by MDOT's contractor, because these services would not impair or interfere with NSR's freight rail service. *Va. Port Auth.—Acquis. Exemption—Norfolk & Portsmouth Belt Line R.R. Co.*, STB Finance Docket No. 35532, slip op. at 4 (STB served Aug. 1, 2011). Additionally, MDOT has a legitimate business justification for assuming control of dispatching the Subject Line through a contractor, as intercity passenger rail service already runs on the Subject Line, and the proposed transaction would “promote the efficient use of existing freight rail corridors for mass transportation without harming common carrier freight operations.” *San Benito R.R. LLC—Acquis. Exemption—Certain Assets of Union Pac. R.R. Co.*, STB Finance Docket No. 35225, slip op. at 4 (STB served June 23, 2011) (“*San Benito*”). MDOT requires control over dispatching in order to ensure reliable and efficient passenger rail service over the Subject Line. In this circumstance, “it is entirely reasonable for the parties to place dispatching . . . responsibilities on [MDOT] rather than [NSR].” *FDOT*, slip op. at 10. Like the transaction approved by the Board in *FDOT*, and unlike the transaction rejected by the Board in *San Benito*, NSR would only transfer its dispatching responsibilities over the Subject Line to MDOT's contractor when MDOT completes its capital improvement projects to upgrade the Subject Line to accommodate high-speed intercity passenger rail service. JOA § 10.

IV. EXPEDITED CONSIDERATION REQUESTED

MDOT respectfully requests that the Board give expedited consideration to this Motion and issue a decision effective by May 31, 2012.

The capital improvements funded by FRA grants would create construction jobs and allow Amtrak to better serve the public by increasing passenger train speeds on the Subject Line. More than \$196 million of the FRA grants derives from the American Recovery and Reinvestment Act of 2009, which was intended to spur economic growth and job creation through, among other things, swift implementation of infrastructure projects. To allow the public to expeditiously gain the benefits of federal investment, MDOT endeavors to begin construction of the capital improvements on the Subject Line as soon as possible.

The proposed transaction must occur in order to implement the capital improvements funded by FRA grants, and MDOT and NSR must receive the Board's dismissal of this Motion in order to close the transaction.⁷ PSA § 10.1. Additionally, Amtrak must hire and train employees to construct and maintain the Subject Line. Therefore, in order to expeditiously begin construction that will result in job creation and increased passenger rail speeds, MDOT respectfully requests that the Board give expedited consideration to this Motion and issue a decision effective by May 31, 2012.

⁷ In light of the complex capital improvements to the Subject Line east of Ypsilanti, negotiations on the JOA took longer than the parties had anticipated. MDOT recognizes that the Board must review a substantially complete version of the JOA in order to rule on this Motion.

V. CONCLUSION

For the reasons set forth above, MDOT respectfully requests that the Board dismiss its Verified Notice of Exemption and issue a decision effective by May 31, 2012.

Respectfully submitted,

By: 

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Dated: March 30, 2012

EXHIBIT A

MDOT-NSR JOINT OPERATIONS AGREEMENT

JOINT OPERATIONS AGREEMENT

THIS JOINT OPERATIONS AGREEMENT (this "Agreement") made this ____ day of ____, 2012 by and between **STATE OF MICHIGAN DEPARTMENT OF TRANSPORTATION ("MDOT")**, and **NORFOLK SOUTHERN RAILWAY COMPANY ("NSR")** (each a "Party" and together the "Parties");

WITNESSETH:

WHEREAS, pursuant to a Purchase and Sale Agreement by and between NSR and MDOT, dated as of October 4, 2011 (the "PSA"), MDOT has agreed to purchase the NSR railroad corridor generally between Kalamazoo and Townline, subject to a Freight Easement, as hereinafter defined, over the Subject Trackage; and

WHEREAS, said Freight Easement is intended to be connective with Consolidated Rail Corporation ("Conrail") shared assets area trackage at Townline ("Conrail Shared Assets"), with trackage rights NSR, as successor to Conrail, has over the Canadian National ("CN") in Battle Creek (between M.P. 176.91 and M.P. 175.29 (the "Battle Creek Trackage")), and with trackage rights NSR has over the tracks of the National Railroad Passenger Corporation ("Amtrak") in Kalamazoo ("NSR Amtrak Rights"); and

WHEREAS, pursuant to STB Finance Docket No. 35187, Grand Elk Railroad, LLC – Lease and Operating Exemption – Norfolk Southern Railway Company, Grand Elk Railroad, LLC ("GER") leases Botsford Yard and holds associated trackage rights, and pursuant to STB Finance Docket No. 35410, Adrian & Blissfield Railroad Company – Continuance in Control – Jackson & Lansing Railroad Company, Jackson & Lansing Railroad Company ("JAIL" and together with GER, the "Existing Tenants"), holds trackage rights in and around Jackson Yard; and

WHEREAS, pursuant to the PSA, NSR has reserved unto itself an exclusive, irrevocable, perpetual, assignable, divisible, licensable and transferable easement for all freight railroad purposes to operate on the Subject Trackage conveyed thereby (the "Freight Easement"); and

WHEREAS, as of the Effective Date, the Parties are entering into a maintenance agreement (the "Maintenance Agreement") pursuant to which MDOT will maintain the Freight Exclusive Use property as contemplated by this Agreement; and

WHEREAS, Amtrak currently operates Intercity Passenger Service, as hereinafter defined, consisting of three (3) daily round-trips of the Wolverine service across the entire Subject Trackage and one daily round-trip of the Blue Water service over the Kalamazoo – Battle Creek Line; and

WHEREAS, as of the Effective Date, MDOT is entering into an agreement (the "MDOT-Passenger Rail Provider Agreement") with a Passenger Rail Provider whereby such Passenger Rail Provider shall provide higher speed Intercity Passenger Service over the Subject Trackage; and

NOW, THEREFORE, the Parties agree as follows:

Section 1. DEFINITIONS

Section 1.1 Certain Definitions. All terms defined in this Agreement shall have the defined meanings when used in this Agreement, unless otherwise defined or the context otherwise requires. The following terms shall have the following meanings:

"AAR" shall mean the Association of American Railroads.

"Agreement" shall mean this Joint Operations Agreement as described in the opening paragraph.

"Amtrak" shall have the meaning set forth in the recitals.

"Battle Creek – Detroit Line" shall generally mean that 112.0 mile (more or less) rail line extending between MP 7.60 in Townline, Wayne County, Michigan and MP 119.60 in Baron, Calhoun County, Michigan excepting Wayne Yard and Willow Run Yard, in each case as further set forth in the PSA.

"Battle Creek Trackage" shall have the meaning set forth in the recitals.

"Battle Creek Trackage Rights" shall mean those rights to perform rail service pursuant to the Battle Creek Trackage Rights Agreement.

"Battle Creek Trackage Rights Agreement" shall mean that certain trackage rights agreement between Grand Trunk Western Railroad and Conrail, dated as of September 14, 1979.

"Claim" or "Claims" shall mean any and all claims, demands, losses (including the loss of use), costs (including investigation, remedial and clean-up costs), expenses (including attorneys', consultants' or experts' fees and expenses), judgments, awards, penalties, governmental action (including fines and liens), causes of action, liens, suits or liability of every kind and nature suffered, including for exemplary, special or consequential Damages.

"Closing" shall mean the date on which the closing and consummation of the transactions contemplated by the PSA occur.

"CN" shall have the meaning set forth in the recitals.

“Commuter Rail Provider” shall mean a Person providing Commuter Rail Service on the Subject Trackage.

“Commuter Rail Service” shall mean any short haul rail passenger transportation provided primarily to passengers traveling between a metropolitan area and its suburbs using reduced fare multiple-ride commutation tickets and provided primarily during morning and peak periods. For the avoidance of doubt, Commuter Rail Service shall include any rail passenger transportation originating on the Subject Trackage and traveling (1) eastwardly from Ann Arbor or points east of Ann Arbor to any point within the Detroit metropolitan area and its suburbs, or (2) westwardly from the Detroit metropolitan area and its suburbs to Ann Arbor or any point east of Ann Arbor.

“Conrail” shall have the meaning set forth in the recitals.

“Conrail Shared Assets” shall have the meaning set forth in the recitals.

“CPI-U” shall have the meaning set forth in Section 13.1.2.1.

“Current Charge” shall have the meaning set forth in Section 5.2.

“Damages” shall mean death, personal injury, property loss or damage or damage to the environment, including but not limited to:

(i) loss or damage to, or loss of use of, the property and death or personal injury to a person; and

(ii) environmental investigation, cleanup or remediation costs, fines, and penalties; and

(iii) any and all damages suffered by or asserted against a Party hereto or third party as a direct or indirect result of or due to the presence, disposal, release or other escape of any Toxic or Hazardous Substances on or from the Subject Trackage, a Train or other Equipment, or on or at property subject to this Agreement or any related agreement; and

(iv) attorney, expert and witness fees, and salaries, wages and benefits of a Party’s employees investigating, adjusting or defending Claims, suits or proceedings for which another Party is potentially liable under this Agreement, together with associated support staff and out of pocket costs, and any investigation, litigation, appeal, arbitration, administrative hearing or governmental action cost.

“Dearborn Segment” shall have the meaning set forth in Section 3.5.4.1.

“Defaulting Party” shall have the meaning set forth in Section 16.2.

"Dispatcher" shall mean NSR during the Transition Period and thereafter shall mean a contractor of MDOT (initially Amtrak) to dispatch Trains on and over the Subject Trackage and the Passenger Exclusive Use Property.

"Double-Tracking Project" shall have the meaning set forth in Section 3.5.2.

"Effective Date" shall have the meaning set forth in Section 16.1.

"Equipment" shall mean locomotives, passenger rail cars or other conveyances, freight rail cars or other conveyances, hyrail vehicles, motor vehicles (while operated on or adjacent to the Subject Trackage), maintenance of way vehicles and equipment, and other similar railroad conveyances and equipment.

"Existing Tenants" shall have the meaning set forth in the recitals.

"Event of Default" shall have the meaning set forth in Section 16.2

"FRA" shall mean the Federal Railroad Administration.

"Freight Easement" shall have the meaning set forth in the recitals.

"Freight Exclusive Use Property" shall mean such ancillary freight-only facilities such as yards, yard offices and side tracks leading to freight-only customer facilities and ancillary freight-only facilities, all of which property shall be more fully described on Exhibit [X].

"Freight Rail Service" shall have the meaning set forth in Section 2.1.

"GER" shall have the meaning set forth in the recitals.

"Governmental Authority" shall mean any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or any mediation body or arbitral tribunal, including the STB.

"HSIPR Program" shall mean the FRA High Speed Intercity Passenger Rail grant program.

"Initial Term" shall have the meaning set forth in Section 16.1.

"Intercity Passenger Service" shall mean all rail passenger service over the Subject Trackage other than Commuter Rail Service.

"JAIL" shall have the meaning set forth in the recitals.

"Kalamazoo – Battle Creek Line" shall mean that 24.21 mile (more or less) rail line extending generally between MP 121.39 in Gord, Calhoun County, Michigan, and MP 145.06 in Kalamazoo, Kalamazoo County, Michigan, in each case as further set forth in the PSA.

"Liability Event of Default" shall have the meaning set forth in Section 13.1.2.4.

"Maintenance Agreement" shall have the meaning set forth in the recitals.

"MDOT" shall have the meaning set forth in the opening paragraph.

"MDOT Indemnified Parties" shall mean MDOT and its directors, officers, agents, personnel and employees (each of whom shall be expressly made a third party beneficiary hereof).

"MDOT-Passenger Rail Provider Agreement" shall have the meaning set forth in the recitals.

"MDOT User" shall mean any Passenger Rail Provider or any Commuter Rail Provider.

"MEDC" shall mean the Michigan Economic Development Corporation.

"North Mainline" shall mean the northern-most of the double tracked mainline that will exist, after the Project is complete, between Townline and CP Ypsi.

"Notice of Audit Results" shall have the meaning set forth in Section 6.3.1.

"NSR" shall have the meaning set forth in the opening paragraph.

"NSR-Amtrak Liability Allocation Agreement" shall have the meaning set forth in Section 13.1.1.

"NSR Amtrak Rights" shall have the meaning set forth in the recitals.

"NSR Indemnified Parties" shall mean NSR and its corporate parent, affiliates, subsidiaries, and partnerships, each of their respective successors and assigns, and all of their respective directors, officers, agents, employees and partners (each of whom shall be expressly made a third party beneficiary hereof).

"NSR-MDOT User Liability Allocation Agreement" shall have the meaning set forth in Section 13.1.2.

“NSR User” shall mean any Person providing Freight Rail Service on the Subject Trackage, including, but not limited to, NSR, its successors and assigns, and its counterparties under trackage rights or other joint facility agreements.

“OPC” shall have the meaning set forth in Section 4.5.1.

“Party” or “Parties” shall have the meaning set forth in the opening paragraph of this Agreement.

“Passenger Exclusive Use Property” shall mean such ancillary passenger-only facilities such as passenger Stations and side tracks leading only to passenger Stations, all of which property shall be more fully described on Exhibit [.].

“Passenger Rail Provider” shall mean a Person providing Intercity Passenger Service on the Subject Trackage.

“Person” shall mean an individual or a partnership, corporation, trust, association, limited liability company, Governmental Authority or other entity.

“Project” shall mean the construction of all improvements to have the Rail Lines accommodate the provision of the Intercity Passenger Service including, but not limited to, the Double-Tracking Project and other related infrastructure contemplated for east of CP Ypsi.

“PSA” shall have the meaning set forth in the recitals.

“PTC” shall mean positive train control.

“Rail Lines” shall mean the Kalamazoo – Battle Creek Line and the Battle Creek – Detroit Line.

“Records” shall have the meaning set forth in Section 6.2.1.

“Response” shall have the meaning set forth in Section 6.3.2.

“South Mainline” shall mean the southern-most of the double tracked mainline that will exist, after the Project is complete, between Townline and CP Ypsi.

“Station” shall mean the passenger rail stations located now or hereafter on the Subject Trackage together with the associated parking lots and ancillary facilities.

“STB” shall mean the U.S. Surface Transportation Board and any successors thereto.

"Subject Trackage" shall mean all rail facilities, including but not limited to yards, leads, main line tracks, sidings and other rail facilities, whether existing now or in the future, on or connected to the Rail Lines, not including, however, Passenger Exclusive Use Property or the Battle Creek Trackage. The intent of the Parties is to have the term "Subject Trackage" read broadly in order to ensure the retention of the Freight Easement over any and all trackage and the use of rail facilities as may be potentially useful for the provision of Freight Rail Service.

"Term" shall have the meaning set forth in Section 16.1.

"Toxic or Hazardous Substances" shall mean and include, without limitation, (a) "hazardous substances" or "toxic substances", or "pollutants or contaminants", as those terms are defined by the Superfund Act; the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; or the Hazardous Materials Transportation Act, 49 U.S.C. § 1802, all as amended; (b) "hazardous wastes", as that term is defined by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., as amended; (c) substances regulated under the Federal Water Pollution Control Act (33 U.S.C. § 1317(a)(1)) and the Clean Air Act (42 U.S.C. § 7412), all as amended; (d) any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials or substances within the meaning of any other applicable federal, state or local law, regulation, code, ordinance, guideline, order, agreement or requirement imposing liability or standards of conduct concerning any hazardous, toxic or dangerous or residual waste substance or material, or the exposure of persons thereto; (e) any crude oil or any other petroleum product; (f) any radioactive material, including any source, special nuclear or by-product material as defined in 42 U.S.C. § 2100 et seq., as amended; (g) asbestos and asbestos containing materials in any form; (h) compounds containing polychlorinated biphenyls; or (i) to the extent not included in the foregoing, any diesel fuel, oil, lubricants or petroleum products, or trash, wastes or materials, or dangerous or explosive materials or substances, or radioactive materials, or any other wastes, contaminants, pollutants or other environmentally regulated substances. For the purposes of this definition, "as amended" shall mean and include any amendment, adoption, revision or promulgation now in effect or occurring after the Effective Date.

"Townline" shall mean the location of the property line between Conrail Shared Assets and the Subject Trackage located approximately at MP MH7.2.

"Train" shall be interpreted to include any combination of one or more locomotives light or with one or more freight and/or passenger rail cars, whether or not such locomotive or car is moving or stationary.

"Transition Period" shall mean the period beginning upon the Closing and ending upon the completion of the Project.

"User" shall mean any MDOT User or NSR User.

"Wayne Yard Segment" shall have the meaning set forth in Section 3.5.4.3.

"Willow Run Segment" shall have the meaning set forth in Section 3.5.4.1.

"Ypsilanti" shall have the meaning set forth in Section 3.4.1.

Section 1.2 Construction of Certain Terms and Phrases. Unless the context otherwise requires, (a) words of any gender include each other gender; (b) words using the singular or plural number also include the plural or singular number, respectively; (c) the terms "hereof," "herein," "hereby" and derivative or similar words refer to this entire Agreement; (d) the terms "Article" or "Section" refers to the specified Article or Section of this Agreement; (e) the terms "and" and "or" include the term "and/or" when the context is appropriate; and (f) the terms "include" or "including" also include the words "without limitation." Whenever this Agreement refers to a number of days, such number shall refer to calendar days. All accounting terms used herein and not expressly defined herein shall have the meanings given to them under generally accepted accounting principles, as in effect in the United States of America. Unless the context otherwise requires, whenever this Agreement refers to an Appendix, Exhibit or Schedule, it is a reference to an Appendix, Exhibit or Schedule attached hereto, and the referenced Appendix, Exhibit or Schedule shall be deemed to be incorporated by reference. The inclusion of internal cross-references in this Agreement does not imply and shall not be construed to exclude the applicability of provisions in this Agreement that are not specifically cross-referenced.

Section 2. FREIGHT RAIL SERVICE OVER THE SUBJECT TRACKAGE

Section 2.1 In addition to the rights of GER in and around Botsford Yard, JAIL in and around Jackson Yard, and CN in and about Battle Creek, in the Freight Easement NSR has reserved the exclusive right to operate over, across and upon the Subject Trackage for all freight railroad purposes, including without limitation the right to operate over the existing improvements conveyed pursuant to the transaction contemplated by the PSA, as well as any future modifications thereto, and any other improvements made to the Subject Trackage (collectively, the "Freight Rail Service"). Such Freight Rail Service shall be performed subject to the terms and conditions of this Agreement, and shall generally consist of the right of NSR Users to operate their Equipment with their own crews over the Subject Trackage. The Parties acknowledge that the Freight Rail Service rights reserved pursuant to the Freight Easement are for the purpose of NSR Users using the same for bridging their freight Trains, connecting with other freight railroads, serving existing and future freight industries located along, adjacent and near the Subject Trackage, having connections made to the Subject Trackage to serve existing and future industries, and operating freight Trains and other Equipment over the Subject Trackage. Included in Freight Rail Service shall be the right of NSR to perform haulage services for other freight rail carriers. MDOT shall not

provide, and may not assign, license, transfer (in whole or in part and including the grant of any freight trackage rights to others) or otherwise permit any other Person to use the Subject Trackage to provide, Freight Rail Service.

Section 2.2 NSR shall not have the power to grant any additional trackage rights to JAIL, GER, or CN, or any other carriers.

Section 3. USE OF SUBJECT TRACKAGE

Section 3.1 Passenger Rail Provider Use of Freight Exclusive Use Property and the Wayne Yard Segment. To the extent the Passenger Rail Provider desires access to any portion of the Freight Exclusive Use Property or the Wayne Yard Segment (i) in the event of emergency or (ii) in order to accommodate maintenance of trackage other than the Freight Exclusive Use Property itself, the Passenger Rail Provider may request such access from the NSR supervisor in charge or other contact as agreed upon by the Parties and the Passenger Rail Provider.

Section 3.2 Freight Rail Service Generally.

Section 3.2.1 NSR's use of Subject Trackage shall be in common with the Passenger Rail Provider and other permitted Users. Subject to the terms of this Agreement, it is the intention of the Parties that the Subject Trackage shall be used in an integrated way by all Users providing passenger and freight rail services, such that there shall be no assigned windows of operation for either.

Section 3.2.2 Subject to the provisions of this Agreement, NSR Users shall have the right to perform the Freight Rail Service at such levels of activity that NSR deems to be appropriate. NSR Users shall have the right to operate in either direction on the Subject Trackage, and shall have the right to provide bridge and local freight rail service to existing and future customers located on or near the Subject Trackage. The rights hereunder shall be connective with the Battle Creek Trackage Rights, Conrail Shared Assets, the NSR Amtrak Rights, existing interchanges with the Existing Tenants, and connections with all other existing and future railroads operating and connecting with the Subject Trackage.

Section 3.2.3 It is the intention of the Parties that new customers of NSR not be located at new turn-outs south of the South Mainline, and therefore NSR shall use commercially reasonable efforts to locate any such new customers requiring service from along the South Mainline at locations where they can be served by existing turn-outs. To the extent NSR is contractually permitted to do so, it shall confer with MEDC and MDOT concerning efforts of new customers to locate south of the South Mainline from a new turn-out; provided that, NSR shall have no obligation to share any information with MDOT that will be subject to disclosure pursuant to the Michigan Freedom of Information Act. Nothing in this Section 3.2.3 shall be interpreted as requiring NSR to perform any act that NSR reasonably demonstrates would constitute a violation of its common carrier freight obligation, but it is the intention of the Parties that

any new customer that can be served from existing turn-outs shall be served from existing turn-outs, if commercially reasonable.

Section 3.3 Intercity Passenger Service Generally. Subject to the provisions of this Agreement (including Sections 2.1, 3.1, 3.4, 3.5, 13.1.2, and 20.1):

Section 3.3.1 MDOT shall have the right to use the Subject Trackage (other than the Freight Exclusive Use Property) and the Passenger Exclusive Use Property for the operation of the Intercity Passenger Service and for any other lawful purposes;

Section 3.3.2 The Passenger Rail Provider's use of Subject Trackage shall be in common with NSR and other permitted Users; and

Section 3.3.3 The Passenger Rail Provider may use the Subject Trackage for the purposes of switching, storing, and servicing passenger cars and Equipment, and the making and breaking up of passenger Trains.

Section 3.4 Use of the Subject Trackage West of Ypsilanti

Section 3.4.1 The Subject Trackage west of Ypsilanti (MP MH28.3) shall be dispatched in accordance with sound dispatching principles. The Dispatcher shall give due regard to the needs of freight and passenger carriers and their customers.

Section 3.4.2 Both the general volumes and approximate times for pre-Closing Freight Rail Service on such Subject Trackage will be protected post-Closing, but both can be adjusted through negotiation. It is anticipated that the addition of a few freight Trains will not unreasonably interfere with current or projected levels of Intercity Passenger Service.

Section 3.4.3 Should NSR desire to materially modify its operations west of Ypsilanti, the Parties shall work together to determine what capital improvements might be required in order to effectuate the change without unreasonably interfering with then-current or then-foreseeable Intercity Passenger Service, with the costs thereof (including the costs of any required PTC system modifications) borne by NSR.

Section 3.5 Construction and Use of the Subject Trackage East of Ypsilanti

Section 3.5.1 The trackage east of Ypsilanti (MP MH28.3) will be dispatched in accordance with sound dispatching principles.

Section 3.5.2 As part of the Project, MDOT shall cause the trackage east of Ypsilanti to become a double-tracked mainline, with agreed-upon cross overs and other improvements (the "Double-Tracking Project"), all at a cost to Persons other

than NSR. A schematic diagram of the Double-Tracking Project is attached as Exhibit 3.5.2.

Section 3.5.3 Once the Double-Tracking Project is completed, the South Mainline west of the anticipated new universal cross-over to be located at or in the vicinity of MP MH9.4 shall be exclusively used for Intercity Passenger Service and Commuter Rail Service, except that NSR may use the South Mainline in the event of (a) an emergency, (b) required maintenance on the North Mainline, and (c) to permit freight service between Townline and such universal crossover, in each case, as reasonably determined by the Dispatcher. Other than as specified in this Section 3.5.3, the South Mainline shall be devoted to Intercity Passenger Service and Commuter Rail Service.

Section 3.5.4 Once the Double-Tracking Project is completed, the North Mainline shall be used and dispatched as described in this Section 3.5.4.

Section 3.5.4.1 Two universal cross-overs are expected to be constructed at or in the vicinity of MP [MH21.7] and [MP MH9.8] and cross-overs are expected to be constructed at MP [MH17.1] and MP [MH25.6]. The portions of the North Mainline between Ypsilanti and the new universal cross-over to be constructed at or in the vicinity of MP [MH21.7] (the "Willow Run Segment") and between Townline and the new universal cross-over to be constructed at or in the vicinity of MP [MH9.8] (the "Dearborn Segment") shall generally be used for freight service, but may be used by the Passenger Rail Provider for (a) scheduled and unscheduled passenger-passenger Train meets, (b) in the event of an emergency, or (c) in order to accommodate required maintenance on the South Mainline, in each case, as reasonably determined by the Dispatcher. The Dispatcher shall use sound dispatching principles to implement the uses described in the foregoing sentence, but such principles do not permit the Dispatcher to expand such uses.

Section 3.5.4.2 The North Mainline between MP [MH9.8] and MP [MH18.2] shall generally be used for freight service, but may be used by the Passenger Rail Provider (a) in the event of an emergency or (b) in order to accommodate required maintenance on the South Mainline, in each case, as reasonably determined by the Dispatcher. The Dispatcher shall permit unscheduled intercity passenger-passenger Train meets on the foregoing portion of the North Mainline only when said meet cannot otherwise reasonably be accommodated on the Willow Run Segment or the Dearborn Segment. The Dispatcher shall use sound dispatching principles to implement the uses described in this Section 3.5.4.2, but such principles do not permit the Dispatcher to expand such uses.

Section 3.5.4.3 Except as provided in Section 3.1, no passenger operations, including but not limited to passenger-passenger Train meets, may occur on the segment of track adjacent to Wayne Yard between approximately MP [MH18.2] and approximately MP [MH21.7], as determined in accordance with the approval of the Project plan pursuant to Section 15.2 (the "Wayne Yard Segment").

Section 3.5.4.4 Other than as specified in Section 3.5.4.1,

Section 3.5.4.2, or Section 3.5.4.3, the North Mainline shall be devoted to the movement of freight.

Section 3.5.5 Should growth of NSR Users' Freight Rail Service consume the capacity of the North Mainline, the Parties shall work together to determine what capital improvements might be required in order to increase capacity on the double tracked mainline to accommodate such freight growth without unreasonably interfering with then-current or then-foreseeable Intercity Passenger Service usage on the North Mainline contemplated by Section 3.5.4 hereof, with the costs thereof (including the costs of any required PTC system modifications) borne by NSR.

Section 3.6 Commuter Rail Service

MDOT may permit the addition of Commuter Rail Service on the Subject Trackage only: (i) after completion of the Project, (ii) after construction of additional capacity to accommodate the Commuter Rail Service at a cost to Persons other than NSR and so as not to delay or reduce available capacity for the Freight Rail Service (directly or indirectly because of an impact on Intercity Passenger Service), (iii) on portions of the Subject Trackage designated in connection with the construction of such additional capacity, and (iv) if the provider of such Commuter Rail Service complies with Section 13.1.2 below.

Section 4. MISCELLANEOUS SPECIAL PROVISIONS

Section 4.1 Each User's locomotives and crews must be equipped, at the User's sole cost and expense, to communicate with the Dispatcher on radio frequencies normally used by the Dispatcher in directing Train movements on the Subject Trackage.

Section 4.2 Procedures for qualification and occupancy of the Subject Trackage by any User will be arranged by MDOT. All control and usage of the Subject Trackage by any User will be subject to the approval of MDOT.

Section 4.3 To the extent an NSR User desires access to any portion of the Passenger Exclusive Use Property in the event of an emergency, the NSR User may request such access from a Passenger Rail Provider representative or other contact as agreed upon by the Parties and the Passenger Rail Provider.

Section 4.4 MDOT shall perform all necessary work required to administer any HSIPR Program funds awarded for capital improvements, and complete such capital improvement projects in compliance with HSIPR Program benchmarks and deadlines. MDOT and NSR shall cooperate to develop a capital improvement schedule, including transition periods, so that the construction can be implemented in a way to ensure that the construction of the capital improvement projects does not unreasonably interfere with NSR's performance of Freight Rail Service over the Subject Trackage.

Section 4.5 The Parties acknowledge that it is in their mutual best interests to have their respective operating and engineering staffs work collaboratively toward

resolving the complex operating issues involved in effectuating the Project.

Section 4.5.1 MDOT and NSR shall each designate two representatives to serve on an Operating Planning Committee ("OPC"). Either Party shall have the right at all times to substitute another person as a representative of that Party, either permanently or for a particular meeting.

Section 4.5.2 The OPC shall: (i) anticipate (where possible), identify, and resolve issues related to compliance with this Agreement, dispatching, construction, maintenance, and conflicts and/or interference between and among the operations of a Passenger Rail Provider and NSR, (ii) carry out other such duties as may be assigned to it in this Agreement, and (iii) address any other operating issues that may arise in connection with the Passenger Rail Provider's operations.

Section 4.5.3 The OPC will meet not less than semi-annually on a scheduled basis, but not more than quarterly unless both Parties agree. If either Party to the OPC desires an additional meeting or meetings, it shall provide a proposed agenda and a thirty (30) day notice to the other Party. The other Party may either agree to the proposed meeting date or propose an alternative meeting date not less than thirty (30) days after the initial proposed meeting date. The Party initiating the meeting request may either agree to the proposed alternative meeting date or will work in good faith with the other Party to select a mutually agreeable meeting date within such sixty (60)-day period.

Section 4.5.4 The Parties shall meet at a site convenient to both Parties or by telephone conference. Each Party shall bear its own costs in connection with OPC activities.

Section 4.6 Except to the extent of a failure to fulfill MDOT's obligations under Section 7, in the event that the Subject Trackage is damaged or destroyed as a result of a catastrophic event (including fire, earthquake, flood, explosion, wreck or other casualty), MDOT shall not have an obligation under this Agreement to restore the Subject Trackage. Notwithstanding the foregoing, within sixty (60) days of the occurrence of any such catastrophic event, MDOT shall either (i) notify NSR of its intent to restore the Subject Trackage or (ii) notify NSR of its intent to not restore the Subject Trackage and confirm in writing that all obligations it has with the FRA or any other governmental authorities relating to restoration of the affected portion of the Subject Trackage have either been satisfied or waived. If MDOT makes the notification in clause (ii), NSR shall have the right (but not the obligation) to bear the cost and expense of restoration of the Subject Trackage to a level it deems necessary for Freight Rail Service; provided that such restored Subject Trackage shall be owned by MDOT and provided further that the Parties shall negotiate in good faith regarding the terms and conditions for construction of such restored Subject Trackage.

Section 5. COMPENSATION

Section 5.1 NSR shall compensate MDOT for NSR Users' use of the Subject Trackage by paying to MDOT a sum computed by multiplying (i) the Current Charge, as hereinafter defined, by (ii) the number of cars (loaded or empty) moved by NSR Users over the Subject Trackage other than solely over the Freight Exclusive Use Property by (iii) the miles of the Subject Trackage other than the Freight Exclusive Use Property over which the cars are moved by NSR Users.

Section 5.2 The "Current Charge" shall initially be set at \$0.445 per car mile. The Current Charge shall be subject to change to reflect any increase or decrease subsequent to the Effective Date in labor, material and other costs, as more fully set forth below in Section 5.4.

Section 5.3 Within fifteen (15) days after (1) the end of the first partial calendar quarter following the Effective Date and (2) the end of each subsequent calendar quarter, NSR shall submit to MDOT a report containing the car mile data listed in Section 5.1 for that calendar quarter. MDOT will use that quarterly report to prepare and send an invoice for the quarterly compensation amount. NSR shall pay the invoice within forty-five (45) days of receipt.

Section 5.4 The Current Charge shall be revised upward or downward each year, beginning with the first NSR submission pursuant to Section 5.3 that falls due at least one year after the Effective Date, to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Charge-out Prices and Wage Rates (1977=100), included in AAR Railroad Cost Indexes and supplements thereto, issued by AAR. In making such a determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East District shall be used. The Current Charge shall be revised by calculating the percent of increase or decrease in the index for the latest calendar quarter as related to the index for the previous calendar quarter and applying that percentage to the Current Charge.

Section 5.5 In the event the base for the Annual Indexes of Charge-out Prices and Wage Rates issued by the AAR or any successor organization discontinues publication of the Annual Indexes of Charge-out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the Parties hereto.

Section 6. PAYMENT OF BILLS

Section 6.1 Except for the payments made pursuant to Section 5, all payments called for under this Agreement shall be made within thirty (30) days after the date of a bill therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the Parties hereto shall be adjusted in the accounts of a subsequent quarterly payment.

Section 6.2 With regard to audits and record-keeping:

Section 6.2.1 The Parties shall establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under this Agreement (the "Records"). Separate records shall be established and maintained for all payments incurred under this Agreement.

Section 6.2.2 NSR shall maintain the Records for at least three (3) years from the date of quarterly payment made to MDOT under this Agreement. MDOT shall maintain the Records for at least three (3) years from the date of quarterly payment made to NSR under this Agreement. In the event of a dispute with regard to the allowable expenses or any other issue under this Agreement, the Parties shall thereafter continue to maintain the Records at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.

Section 6.2.3 The Parties or their representatives may inspect, copy, or audit the Records at any reasonable time after giving reasonable notice during the three (3) year period specified in Section 6.2.2.

Section 6.3 Settlement of payments made by NSR pursuant to Section 5 shall be made upon completion of an audit by MDOT pursuant to this Section 6.3.

Section 6.3.1 In the event that an audit conducted on the quarterly payments performed by or on behalf of MDOT indicates an adjustment to the payments reported under this Agreement, MDOT will promptly submit to NSR a notice (the "Notice of Audit Results") and a copy of the audit findings, which may supplement or modify any tentative findings verbally communicated to NSR at the completion of an audit.

Section 6.3.2 Within sixty (60) days after the date of the Notice of Audit Results, NSR will (a) respond in writing to MDOT indicating whether or not NSR concurs with the audit report, (b) clearly explain the nature and basis for any disagreement as to an adjustment, and (c) submit to MDOT a written explanation (the "Response"). The Response will be clearly stated and will provide any supporting documentation necessary to resolve any disagreement. Where the documentation is voluminous, NSR may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by MDOT. The Response will refer to and apply the language of this Agreement. NSR agrees that failure to submit a Response within the sixty (60) day period constitutes agreement with any adjustment and authorizes MDOT to finally adjust any items.

Section 6.3.3 MDOT will make its decision with regard to any Notice of Audit Results and Response within one hundred twenty (120) days after the date of the Notice of Audit Results. If MDOT determines that an underpayment or overpayment has been made by NSR, NSR will account for the adjustment on the following quarterly payment or reach agreement with MDOT on a repayment schedule within thirty (30) days after the date of the Notice of Audit Results from MDOT. If NSR fails to adjust the

quarterly payment or reach agreement with MDOT on a repayment schedule within the thirty (30) day period, NSR agrees that MDOT will deduct all or a portion of the overpayment from any funds then or thereafter payable by MDOT to NSR under this Agreement or any other agreement or payable to NSR. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be based on the Michigan Department of Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by MDOT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. NSR expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit in the State of Michigan Court of Claims to contest MDOT's decision only as to any item of payment the disallowance of which was disputed by NSR in a timely filed Response.

Section 7. MAINTENANCE OF SUBJECT TRACKAGE

Section 7.1 MDOT shall cause the Subject Trackage and the associated Train control signal system to be maintained, repaired and renewed, at its sole cost, risk and expense and in a manner consistent with federal law.

Section 7.1.1 MDOT shall cause the Subject Trackage and the associated train control signal system, other than the Freight Exclusive Use Property, to be kept and maintained in reasonably good condition for the use herein contemplated, but in no event in less than FRA Class II condition. All maintenance, renewal and improvement of the Subject Trackage, other than the Freight Exclusive Use Property, shall be consistent with the intention of retaining at least the current weight and clearance capacities, as well as the maintenance of any and all existing and future mainline turnouts.

Section 7.1.2 Except as otherwise provided in this Section 7.1.2, MDOT shall cause the Freight Exclusive Use Property to be kept and maintained in reasonably good condition for the use herein contemplated, but in no event in less than FRA Class I condition, at NSR's sole cost, risk and expense and in accordance with the terms set forth in the Maintenance Agreement; provided that to the extent that MDOT elects to maintain any portion of the Freight Exclusive Use Property in above FRA Class I condition, any additional costs incurred in connection with such additional maintenance shall be borne by Persons other than NSR. MDOT shall bill NSR for such services each calendar quarter. All maintenance, renewal and improvement of the Freight Exclusive Use Property shall be at the direction of NSR to MDOT, as received from time to time. Notwithstanding the foregoing, NSR may at any time, by delivering written notice to MDOT, elect to assume responsibility for any portion of such maintenance obligations.

Section 7.1.3 In the event that Intercity Passenger Service and any Commuter Rail Service over the Subject Trackage are not provided for five (5) consecutive years and MDOT cannot reasonably demonstrate that Intercity Passenger

Service or any Commuter Rail Service will be recommenced in the next five (5) years, MDOT agrees that it will join, at its sole cost and expense, with NSR in petitioning the relevant Governmental Authorities for approval to remove such train control signal system, unless such train control system is otherwise required by law.

Section 7.1.4 Subject to the foregoing, MDOT does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. MDOT shall take reasonable steps to ensure that any interruptions will be kept to a minimum and shall use its commercial best efforts to avoid such interruptions. MDOT shall consult with NSR in the scheduling of regularly performed maintenance services, and shall make reasonable accommodations in order to ensure that such maintenance is performed in a manner so as to not unreasonably interfere with the provision of Freight Rail Service on the Subject Trackage.

Section 7.2 In the event that MDOT fails to provide maintenance on all or any portion of the Subject Trackage, (excluding the Freight Exclusive Use Property, which shall be addressed in the Maintenance Agreement) to the level required by this Agreement, subject to Section 16.2, NSR shall have the right, but not the obligation, with its own qualified forces or with those of a qualified contractor, to provide for maintenance on such sections of the Subject Trackage as may be, in its reasonable judgment, reasonable or necessary for provision of the current or anticipated Freight Rail Service. In such event, subject to Section 20.1 hereof, MDOT shall suspend any Intercity Passenger Service (except for Intercity Passenger Service provided by Amtrak) and any Commuter Rail Service over said NSR-maintained portion of the Subject Trackage. Moreover, NSR shall have the right to provide Amtrak with notice of the fact that it has undertaken such maintenance and that it intends to maintain the Subject Trackage only to a level necessary to accommodate the Freight Rail Service. Any such maintenance undertaken by NSR shall be without warranty that the Subject Trackage or any portion thereof is suitable for the operation of passenger trains, including Intercity Passenger Service; provided, however, that nothing in this Section 7.2 shall be interpreted to alter the liability allocation set forth in the NSR-Amtrak Liability Allocation Agreement. During such period, NSR shall be relieved of any obligation to compensate MDOT for the movement of NSR traffic over such portion of the Subject Trackage. MDOT shall promptly work with NSR to restore MDOT maintenance services over such portion of the Subject Trackage. Upon restoration of MDOT maintenance services, NSR shall recommence compensation to MDOT for the movement of NSR traffic over the restored portion. NSR shall not have the right to maintain the Passenger Exclusive Use Property. MDOT shall release, and shall cause any MDOT User other than Amtrak to indemnify and hold harmless, the NSR Indemnified Parties for any Claims arising from NSR maintenance undertaken pursuant to this Section 7.2. Once MDOT resumes maintenance of the Subject Trackage, any suspended Intercity Passenger Service and Commuter Rail Service may begin again, but only if MDOT causes any MDOT User other than Amtrak to indemnify and hold harmless NSR for any claim arising from the maintenance performed by NSR pursuant to this Section 7.2.

Section 8. CONSTRUCTION, MAINTENANCE AND RETIREMENT OF CONNECTIONS AND OTHER FACILITIES

Section 8.1 It is acknowledged and agreed that modifications to the Subject Trackage for Intercity Passenger Service after completion of the Project may have an effect on the provision of Freight Rail Service and modification of Freight Rail Service may have an effect on the provision of Intercity Passenger Service. Such modifications shall take place pursuant to this Section 8. The intent of the Parties is to enable future modifications to support the Intercity Passenger Service or to support the Freight Rail Service, without unreasonably interfering with either service. Accordingly, modifications requested to support either the Freight Rail Service or the Intercity Passenger Service shall be engineered and constructed in a manner so as to not unreasonably interfere with the performance of the other service.

Section 8.2 Except as otherwise provided herein, existing connections or facilities shall continue to be maintained, repaired and renewed by and at the expense of the party or parties responsible for such maintenance, repair and renewal under such agreements.

Section 8.3 If NSR shall desire a new or upgraded connection or other facility or improvement (including, but not limited to, spur, industrial, side or storage tracks, turnouts, and car weighing or tracking facilities), NSR shall submit to MDOT, for MDOT's advance written approval (which approval shall not be unreasonably withheld or delayed), an engineering and construction plan setting forth proposed specifications. MDOT shall have the right, within thirty (30) days after receipt of such a plan, to request additional information regarding such plan. MDOT shall approve, approve conditionally, or reject NSR's engineering and construction plan in writing within sixty (60) days after receipt of the plan. If MDOT does request additional information, MDOT shall approve, approve conditionally, or reject NSR's engineering and construction plan in writing within sixty (60) days after receipt of the additional information.

Section 8.3.1 MDOT may only reject or condition approval in the event the proposed new or upgraded connection or other facility or improvement will unreasonably interfere with the Intercity Passenger Service. In the event that MDOT rejects or conditions approval pursuant to this Section 8.3.1, MDOT shall in said written rejection or conditioned approval provide a specific explanation as to how the proposed new or upgraded connection or other facility or improvement will unreasonably interfere with the Intercity Passenger Service.

Section 8.3.2 If MDOT rejects or approves conditionally NSR's plan, MDOT shall confer promptly with NSR on revisions necessary to obtain approval. NSR shall, in its discretion, provide revised plans. MDOT shall approve, approve conditionally or reject NSR's revised plan(s) in writing within thirty (30) days after receipt thereof.

Section 8.3.3 The foregoing process shall continue until final approval has been reached.

Section 8.4 If NSR shall desire the retirement or removal of a connection or other facility, MDOT shall either (i) approve such retirement or removal and eliminate such connection or other facility at NSR's sole cost and expense or (ii) decline to approve such retirement or removal, in which event any further maintenance or further obligations associated with such connection or other facility shall be at MDOT's sole cost and expense. Any such retirement or removal shall be engineered to the reasonable satisfaction of NSR.

Section 8.5 NSR shall pay the cost of construction for such new or upgraded connection or other facility or improvement constructed pursuant to Section 8.3, or retirement or removal pursuant to Section 8.4. In each case, the cost of such construction or retirement shall include the cost of necessary modifications to the PTC system.

Section 8.5.1 Any construction services undertaken pursuant to Section 8.3 or Section 8.4 within the clearance point of the mainline shall be provided through the Passenger Rail Provider, pursuant to a contract with MDOT. MDOT shall cause the Passenger Rail Provider to furnish to NSR an estimate for such construction services and to follow the procedures set forth in this Section 8.5.1. The estimate shall be based on the Passenger Rail Provider's actual costs and its then current overhead charges, rates, and additives computed in accordance with its accounting policies and procedures and with 48 C.F.R. Part 31 (which Part is expressly adopted for purposes of performing the calculation of such overhead charges, rates, and additives, whether or not such Part is applicable by its terms) (collectively, the "Construction Cost"). NSR shall have the right, within twenty (20) days after NSR's receipt of such estimate to call for a meeting with the Passenger Rail Provider and MDOT to discuss the estimate. If the estimate is acceptable to NSR, NSR shall give a notice to proceed with respect to the construction services. MDOT shall cause the Passenger Rail Provider to use its best efforts to notify NSR of changes in the Construction Cost that exceed the estimate. NSR shall be responsible to pay the Construction Cost; provided, that in the event that the actual Construction Cost is projected by the Passenger Rail Provider to exceed 110% of the estimated Construction Cost, NSR and the Passenger Rail Provider shall meet to attempt in good faith to address the projected increase. As part of such meeting, NSR and the Passenger Rail Provider shall consider changing the scope of the construction services, value engineering, or revisions to the Construction Cost estimate. NSR shall have the right at any time to direct MDOT to cause the Passenger Rail Provider to suspend or terminate any or all of the construction services in an orderly and safe manner, and NSR shall pay any Construction Cost of the Passenger Rail Provider incurred up to the time of such suspension or termination, and any costs (calculated in accordance with the Construction Cost methodology set forth above) incurred in effecting such suspension or termination. The records for the Construction Cost and the construction services shall be subject to the audit provisions set forth in Section 6 hereof, and for purposes of such audit, such records shall be deemed to be MDOT records. Construction shall not proceed unless NSR approves the proposed contract.

Section 8.5.2 NSR shall be responsible for the aforesaid construction, retirement, or removal of facilities or improvements pursuant to Section 8.3 and Section 8.4 where such activities occur beyond the clearance point of the mainline. NSR shall have the right to designate any of the aforesaid improvements beyond the clearance point of the mainline as being included in the Freight Exclusive Use Property hereunder.

Section 8.6 Existing turnouts shall not be removed without the consent of NSR, such consent not to be unreasonably withheld, conditioned or delayed.

Section 8.7 Subject to Sections 8.1 and 8.6, MDOT, at its sole cost and expense, may have other changes in, additions and improvements to, or retirements from, the Subject Trackage made as shall, in its judgment, be necessary or desirable for the Intercity Passenger Service. MDOT shall use its commercial best efforts to secure NSR approval for any such modifications, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, if NSR refuses to approve any such change, addition, improvement, or retirement, MDOT shall have the right to proceed with such change, addition, improvement, or retirement, provided that such change, addition, improvement, or retirement does not unreasonably interfere with Freight Rail Service, as provided in Section 8.1.

Section 8.8 As between NSR and MDOT, MDOT shall have the responsibility to maintain and keep, at its cost, the Subject Trackage in accordance with any law, rule, regulation, or ordinance promulgated by any Governmental Authority having jurisdiction; provided that if any changes, additions and improvements, or retirements are required to be made to the Subject Trackage in order to comply with any law, rule, regulation, or ordinance promulgated by any governmental body and such changes, additions and improvements, or retirements are attributable solely to the Freight Rail Service, and not attributable to the joint operation of Freight Rail Service together with the Intercity Passenger Service and/or the Commuter Rail Service, MDOT shall have responsibility for making such changes, additions and improvements, or retirements, but NSR shall have responsibility for the cost of such changes, additions and improvements, or retirements. Such changes, additions and improvements, or retirements, shall be made in accordance with Section 8.5.

Section 9. MANAGEMENT AND OPERATIONS

Section 9.1 NSR will continue to provide dispatching until the Project, including the Double-Tracking Project, is completed, at which time dispatching shall be transferred to a contractor of MDOT. MDOT shall notify NSR in writing that the Double-Tracking Project is completed. NSR shall have the right, within ten (10) days after NSR's receipt of such a notice, to notify MDOT in writing that NSR disagrees that the Double-Tracking Project is completed. If NSR submits such a notice, the Parties shall, within ten (10) days after MDOT's receipt thereof, meet and negotiate in good faith to resolve any disagreement on this issue and take steps to implement the resolution. NSR and MDOT will negotiate in good faith regarding the phased transfer of dispatching responsibilities to MDOT's contractor, but only after the Double-Tracking Project is

completed, but the foregoing does not imply an obligation for such a phased transfer. If NSR is the Dispatcher, speeds on the dispatched segment shall not exceed 79 mph.

Section 9.2 Except as provided in Section 9.1 and Section 7.1.2, and subject to the provisions of this Agreement, MDOT shall have exclusive control of the management, dispatching, maintenance and operation of the Subject Trackage, but it must conduct such control through the Passenger Rail Provider, a Dispatcher or another contractor. Except as provided for in Section 5, MDOT shall not seek compensation from NSR for such management, dispatching, maintenance and operation of the Subject Trackage.

Section 9.3 MDOT shall require each MDOT User to comply in all respects with their own safety rules, and the operating rules, timetables, notices, bulletins, orders, and other regulations and procedures of MDOT, as applicable, and the movement of the Trains, locomotives, cars, and Equipment of each such MDOT User, over the Subject Trackage shall at all times be subject to the orders of MDOT, such safety rules, operating rules, timetables, notices, bulletins, orders and other regulations and procedures not to be inconsistent with this Agreement. MDOT shall require that each MDOT User Train shall not include locomotives, cars or Equipment that exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances.

Section 9.4 NSR hereby agrees to comply, and cause NSR Users to comply, in all respects with their own safety rules, and the operating rules, timetables, notices, bulletins, orders, and other regulations and procedures of MDOT, as applicable, and the movement of NSR Users' Trains, locomotives, cars, and Equipment over the Subject Trackage shall at all times be subject to the orders of MDOT, such safety rules, operating rules, timetables, notices, bulletins, orders and other regulations and procedures not to be inconsistent with this Agreement. NSR shall require the Trains of NSR Users to not include locomotives, cars or Equipment that exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances.

Section 9.4.1 MDOT shall require each MDOT User other than Amtrak to indemnify, protect, defend, and save harmless the NSR Indemnified Parties from and against all Claims imposed upon the NSR Indemnified Parties under laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of such MDOT User to comply with its obligation to comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of that MDOT User's Trains, locomotives, cars and Equipment in this regard.

Section 9.4.2 NSR hereby agrees to indemnify, protect, defend, and save harmless the MDOT Indemnified Parties from and against all Claims imposed upon the MDOT Indemnified Parties under such laws, rules, and regulations by any

public authority or court having jurisdiction in the premises, when attributable to the failure of NSR Users to comply with their obligation to comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of the NSR User's Trains, locomotives, cars and Equipment in this regard.

Section 9.5 NSR shall make such arrangements with MDOT and NSR Users, as may be required, to have all employees of NSR Users who shall operate the Trains, locomotives, cars and Equipment of NSR Users over the Subject Trackage qualified for operation thereover, and NSR shall pay to MDOT upon receipt of bills therefor, any reasonable cost incurred by MDOT in connection with the qualification of such employees of an NSR User, as well as the reasonable cost of pilots furnished by MDOT, until such time as such employees of an NSR User are deemed by the appropriate examining officer of MDOT to be properly qualified for operation as herein contemplated.

Section 9.6 If any employee of an NSR User shall neglect, refuse or fail to abide by MDOT's rules, timetables, notices, bulletins, orders, regulations, procedures, practices, instructions or restrictions governing the operation on or along MDOT's property, such employee shall, upon written request of MDOT, be prohibited by MDOT from working on MDOT's property. If any party shall deem it necessary to hold a formal investigation to establish such neglect, refusal or failure on the part of any NSR User employee, then upon such notice presented in writing, NSR shall, or NSR shall cause the NSR User to, promptly hold an investigation in which all parties concerned shall participate and bear the expense for its officers, counsel, witnesses and employees. Notice of such investigations to the employees of NSR Users shall be given by the officers of the NSR User, and such investigation or hearing may be attended by any official designated by such NSR User and shall be conducted in accordance with the terms and conditions of schedule agreements between the NSR Users and their employees that pertain to the NSR Users' employee or employees required to attend such hearings. If the result of such investigation warrants, such employee shall, upon written request by MDOT, be withdrawn by the NSR User from service on MDOT's property, and NSR shall, or NSR shall cause the NSR User to, release and indemnify MDOT Indemnified Parties from and against any and all Claims and expenses because of such withdrawal.

Section 9.7 In the event that a Train of an NSR User shall be forced to stop on the Subject Trackage due to mechanical failure of the Equipment of the NSR User, or any other cause not resulting from an accident or derailment, and such Train is unable to proceed, or if in emergencies, crippled or otherwise defective cars are set out of the Trains of the NSR User on the Subject Trackage, the Passenger Rail Provider shall have the option to furnish motive power or such other assistance as may be necessary to haul, help or push such Trains, locomotives or cars, or to properly move the disabled Equipment off the Subject Trackage, and NSR shall reimburse, or NSR shall cause the NSR User to reimburse, MDOT for the full cost of rendering any such assistance, or of

any agents or contractors who are engaged to render such assistance. In the event that a passenger Train shall be forced to stop on the Subject Trackage due to mechanical failure of the passenger Train's Equipment, or any other cause not resulting from an accident or derailment, and such Train is unable to proceed, or if in emergencies, crippled or otherwise defective cars are set out of the passenger Train on the Subject Trackage, NSR shall have the option, but not the obligation, to furnish motive power or such other assistance as may be necessary to haul, help or push such Trains, locomotives or cars, or to properly move the disabled Equipment, and MDOT shall reimburse NSR for the full cost of rendering any such assistance, or of any agents or contractors who are engaged to render such assistance.

Section 9.8 If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by NSR or its agents or contractors.

Section 9.9 MDOT shall arrange for the installation, maintenance and renewal over the Subject Trackage of a PTC system that complies with applicable law and is fully interoperable with the system adopted over the national freight system. Except as is specified in Sections 3.4.3, 3.5.5, and 8.5, MDOT shall be responsible for all costs associated with the installation, maintenance and renewal of the PTC system. In no event shall NSR have any obligation for any of such costs; provided that, NSR shall bear the costs of equipping its locomotives in accordance with the requirements of the PTC system.

Section 9.10 Notwithstanding anything in this Agreement to the contrary, and without relieving MDOT of any of its responsibilities hereunder, MDOT shall contract for the performance of (a) any maintenance services, (b) any construction services, (c) the Dispatcher (after the Transition Period), (d) the services of an MDOT User, and (e) any other goods or services for which MDOT is responsible under this Agreement. Such performance shall, as between NSR and MDOT, be at the expense of MDOT (subject to Section 7.1.2).

Section 10. DISPATCHING

MDOT shall contract for the provision of dispatching services on the Subject Trackage following the Transition Period. MDOT shall cause such contractor to dispatch the Subject Trackage in accordance with this Agreement, including but not limited to Sections 3.4.1, 3.5 and 20.1. NSR shall cooperate in the transition of the dispatching of the Subject Trackage from NSR to any non-NSR Dispatcher.

Section 11. MILEAGE AND CAR HIRE

Mileage and car hire charges accruing on cars in NSR's Trains on the Subject Trackage shall be assumed by NSR and reported and paid by it directly.

Section 12. CLEARING OF WRECKS

Whenever the use of the Subject Trackage by an NSR User requires rerailing, wrecking service or wrecking train service, the Passenger Rail Provider or its agent or contractor shall perform or provide such service, including the repair and restoration of roadbed, trackage and structures. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Section 13. All locomotives, cars, and Equipment and salvage from the same so picked up and removed which is owned by or under the management and control of or used by an NSR User at the time of such wreck, shall be promptly delivered to that NSR User.

Section 13. LIABILITY AND INSURANCE

Section 13.1 Liability and risk of damage between NSR and MDOT Users, and NSR and MDOT, for incidents which occur on or after the Effective Date and on or adjacent to the Subject Trackage shall be allocated as follows:

Section 13.1.1 NSR and Amtrak have entered into that certain agreement dated [] governing liability allocation between them (the "NSR-Amtrak Liability Allocation Agreement").

Section 13.1.2 This Section 13.1.2 and all subsections hereof apply only to MDOT Users other than Amtrak. MDOT shall not permit such an MDOT User to operate on the Subject Trackage without it first entering into an agreement with NSR (an "NSR-MDOT User Liability Allocation Agreement") that mirrors the liability allocation in the NSR-Amtrak Liability Allocation Agreement and provides additionally that:

Section 13.1.2.1 Such an MDOT User shall have liability insurance in the amount of \$500 million, as such amount shall be adjusted every five (5) years in the same proportion as the annual average percent change (up or down) in the All Items Consumer Price Index for All Urban Consumers for the U.S. City Average, 1982-84 = 100 ("CPI-U"), with the initial CPI-U base index being the CPI-U annual average for the year immediately preceding the effective date of the NSR-MDOT User Liability Allocation Agreement. Notwithstanding the foregoing, the liability insurance amount shall not be less than \$500 million.

Section 13.1.2.2 In case suit shall at any time be brought against such an MDOT User or NSR asserting a liability against which the others have agreed to indemnify and save harmless the party sued, the indemnifying party shall, at its own cost and expense and without any cost or expense whatever to the party sued, defend such suit and indemnify and save harmless the party sued against all costs and expenses thereof and promptly pay or cause to be paid any final judgment recovered against the party sued; provided, however, that the party sued shall promptly upon the bringing of any such suit against it give notice to the indemnifying party and thereafter provide all such information as may from time to time be requested. Each party shall

furnish to the other all such information relating to Claims made for Damages of the type covered by the NSR-MDOT User Liability Allocation Agreement as such other party may from time to time request. Each party shall cooperate fully in the defense of Claims for which the other party is responsible, including furnishing witnesses, documents, and other relevant information requested by the responsible party.

Section 13.1.2.3 SUCH AN MDOT USER AND NSR EXPRESSLY INTEND THAT WHERE ONE PARTY IS TO INDEMNIFY THE OTHER, SUCH INDEMNITY SHALL APPLY IRRESPECTIVE OF ANY NEGLIGENCE OR FAULT OF THE INDEMNIFIED PARTY AND WITHOUT REGARD TO STRICT LIABILITY OF THE INDEMNIFIED PARTY.

Section 13.1.2.4 Such an MDOT User shall use commercially reasonable efforts to cause their insurance carriers to add NSR as an additional insured on all general liability policies covering such an MDOT User's operations on the Subject Trackage. Such an MDOT User will require that NSR be added as an additional insured with such an MDOT User with respect to operations by any third party utilizing such an MDOT User's services provided over the Subject Trackage if such an MDOT User requires that insurance be provided for it by such third party.

Section 13.1.2.5 If at any time such an MDOT User (i) fails to maintain the required insurance coverage or (ii) fails to indemnify NSR in accordance with the terms set forth in the NSR-MDOT User Liability Allocation Agreement (each a "Liability Event of Default"), there shall be an immediate suspension of the right to operate Intercity Passenger Service or Commuter Rail Service, as the case may be, until such time that the Liability Event of Default is fully cured. Such an MDOT User agrees that money damages alone would not be a sufficient remedy for a breach of this Section 13.1.2 by the MDOT User and, accordingly, that NSR shall be entitled, in addition to any other remedies at law or in equity otherwise available to it, to specific performance and injunctive relief as a remedy for any such breach, including, without limitation, the right to have the operating rights of such an MDOT User suspended. In any action to enforce the terms of this Section 13.1.2.3, NSR shall be entitled to recover all costs and expenses incurred, including reasonable attorneys' fees.

Section 13.2 This Section 13.2 does not apply to Amtrak or other MDOT Users. The liability arrangements between Amtrak and NSR, and other MDOT Users and NSR are covered in Section 13.1. MDOT shall require that each contractor engaged by MDOT for the performance of (a) the maintenance services set forth in Section 7, (b) any construction services, (c) dispatching services as the Dispatcher (after the Transition Period), or (d) any other goods or services for which MDOT is responsible under this Agreement, pursuant to Section 9.10, (i) is contractually required to protect, defend, indemnify, and save harmless the NSR Indemnified Parties from any and all Claims for Damages arising from or attributable to, or exacerbated by the contractor's performance of the services contemplated under such contract, and (ii) is adequately insured to satisfy the indemnity obligations in this Section 13.2.

Section 13.3 MDOT shall be responsible for any and all Claims arising out of its

own acts and/or omissions, and those of its employees, during the performance of its or their obligations under this Agreement; provided, however, that this provision is not intended to nor will it be interpreted as (1) giving a right of indemnification, either by contract or by law, for Claims arising out of the performance of this Agreement, or (2) a waiver of MDOT's sovereign immunity.

Section 13.4 If any suit or action is brought against any Party that is in whole or in part the responsibility of another Party, that other Party shall be given prompt written notice by the Party sued, and the Party so notified must either assume responsibility for the defense of the suit or participate in its defense, as may be appropriate, provided, however, that any Party to the suit or action may select and retain their own counsel and participate in the defense of any such suit or action, the cost of which shall be allocated pursuant to this Agreement. The Parties agree to cooperate in the defense of any such suits or actions. The settlement of any such lawsuit requires approval of each of the Parties named therein.

Section 13.5 Except for NSR's indemnity obligations as expressly provided herein, MDOT agrees that it shall fully and finally waive, release, and acquit the NSR Indemnified Parties from any and all Claims, whether known or unknown, that MDOT had, now has, or will have of any kind, by reason of any matter or thing from any cause whatsoever, from the beginning of time thereafter which arises, or may arise, from or relates to this Agreement, the Parties' obligations hereunder and/or any of the transactions and other activities contemplated hereby.

Section 13.6 Except to the extent of any comparative fault of MDOT Indemnified Parties, NSR agrees to indemnify and save harmless MDOT Indemnified Parties from any and all damage and liability for injury to or death of any person or for loss of, damage to or destruction of any property where such injury, death, loss, damage or destruction arises from the transportation or use in NSR User Trains on the Subject Trackage of Toxic or Hazardous Substances. For purposes of this provision, hazardous or toxic materials shall also include petroleum, crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas useable for fuel (or mixtures of natural gas and such synthetic gas). Damage for which NSR is responsible under this Section 13.6 shall include clean-up, removal, and remedial action required by law or the lawful directive of any agency having jurisdiction thereof, and restoration of any portion of the Subject Trackage that is damaged by an NSR User's transportation of Toxic or Hazardous Substances on the Subject Trackage (including fueling of an NSR User's locomotives by parties other than MDOT or an MDOT contractor) to a level commensurate with the existing condition of such property immediately prior to such damage.

Section 14. CLAIMS AND REMEDIES

Section 14.1 MDOT agrees that money damages alone would not be a sufficient remedy for a breach of Sections 7.2 or 13.1.2 by MDOT and, accordingly, that NSR shall be entitled, in addition to any other remedies at law or in equity otherwise available to it, to specific performance and injunctive relief as a remedy for any such breach. In

any action to enforce the terms of Sections 7.2 or 13.1.2, NSR shall be entitled to recover all costs and expenses incurred, including reasonable attorneys' fees.

Section 14.2 Each Party shall be responsible for any and all costs and payments, including benefits, allowances, and arbitration, administrative and litigation expenses, arising out of Claims or grievances made by or on behalf of or lawsuits brought by or on behalf of its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a Governmental Authority upon the agency's approval or exemption of this Agreement and operations hereunder or pursuant to a collective bargaining agreement. It is the Parties' intention that each Party shall bear the full costs of protection of its own employees under employee protective conditions that may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees.

Section 15. CONSTRUCTION OF THE PROJECT

Section 15.1 MDOT shall construct the Project. As between NSR and MDOT, such construction shall be at the cost, risk and expense of MDOT and the Project shall be completed at no cost to NSR; provided that NSR shall be responsible for its own costs and expenses relating to studies and/or engineering.

Section 15.2 MDOT shall use its commercial best efforts to secure NSR approval of any plans for the Project, which approval shall not be unreasonably withheld, conditioned or delayed. If NSR refuses to approve any such Project plan, MDOT shall have the right to proceed with such Project plan, provided that such plan complies with this Agreement, including, but not limited to, Exhibit 3.5.2, and would not result in unreasonable interference with Freight Rail Service.

Section 16. TERM, DEFAULT AND EXPIRATION

Section 16.1 This Agreement shall become effective as of the Closing (the "Effective Date"), although MDOT and NSR may execute this Agreement prior to the Closing and, if required, following expiration of any time periods required by the issuance of labor notices by either Party. This Agreement shall remain in full force and effect for a period of ninety-nine (99) years (the "Initial Term") and thereafter shall automatically renew for successive three-year periods unless either Party gives six (6) months advance written notice of its intent to not renew the Agreement prior to expiration of the Initial Term or any successive three-year renewal period (together with the Initial Term, the "Term").

Section 16.2 An "Event of Default" shall have occurred if either Party fails to meet any material obligation under this Agreement (the "Defaulting Party") and such failure continues sixty (60) days after written notice from the other Party.

Section 16.3 Except for the non-renewal provision set forth in Section 16.1,

neither party shall have the right to terminate this Agreement. However, upon the occurrence of an Event of Default, the other Party may, at its option:

Section 16.3.1 exercise any rights it has under this agreement, including without limitation, Section 7.2;

Section 16.3.2 proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by the Defaulting Party of the applicable provisions of this Agreement and/or to recover damages (together with attorneys' fees and such Party's other costs), and/or to seek other remedies; or

Section 16.3.3 cure the default by making any such payment or performing any such obligation, as applicable, at the Defaulting Party's sole expense, without waiving or releasing the Defaulting Party from any obligation.

Section 16.4 The rights and remedies described in Section 16.3 are and shall be deemed to be cumulative and the exercise of any of them shall not be deemed to be an election excluding the exercise at any time of a different remedy, subject to the limitations set forth in the first sentence of Section 16.3.

Section 16.5 Any waiver by either Party of any Event or Default under this Agreement or any delay of either Party in enforcing any remedy set forth herein shall not constitute a waiver of the right to pursue any remedy at a later date, nor shall any such waiver in any way affect either Party's right to enforce the Agreement.

Section 16.6 Expiration of this Agreement shall not relieve or release either Party hereto from any obligations assumed or from any liability which may have arisen or been incurred by such Party under the terms of this Agreement prior to expiration thereof. Expiration of this Agreement shall have no effect on the underlying right to perform Freight Rail Service, which shall continue until terminated pursuant to applicable law. Should this Agreement expire prior to the termination of the underlying right to perform Freight Rail Service, such Freight Rail Service shall continue under terms and conditions agreed to by the Parties or prescribed therefor pursuant to applicable law.

Section 17. WAIVER OF JURY TRIAL

With respect to any dispute between NSR and MDOT arising under this Agreement, and except to the extent prohibited by applicable law, NSR and MDOT each hereby waive and relinquish any right each may have to trial by jury.

Section 18. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto including any person, firm or corporation succeeding to the ownership of substantially all of the assets or business of NSR or into which NSR is merged or consolidated. NSR may freely assign its rights, interests and obligations

under this Agreement to any parent, subsidiary, or affiliate of NSR. Any other assignment, division, license, or transfer of its rights, interests or obligations hereunder (a) to any other entity (the "Assignee") shall not result in more than one freight operator operating on any segment of the Subject Trackage other than freight lessees and trackage rights tenants existing as of Closing (which, for avoidance of doubt, prohibits the grant of any new trackage rights), and (b) shall be subject to the consent of MDOT, which consent shall not be unreasonably withheld or delayed.

Section 19. NOTICE

Any notice required or permitted to be given by one Party to another under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the Parties may agree, and shall be addressed as follows:

If to MDOT: Administrator
Office of Rail
Michigan Department of Transportation
PO Box 30050
Lansing, MI 48909

If to NSR: Vice President, Transportation-Operations
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510-2191

With a copy to: Vice President Law
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-2191

Any Party may provide changes in the above addresses to the other Parties by personal service or U.S. mail.

Section 20. GENERAL PROVISIONS

Section 20.1 Nothing in this Agreement shall derogate any of Amtrak's or any other parties' rights under 49 U.S.C. § 24308.

Section 20.2 Except as expressly set forth herein, this Agreement and each and every provision hereof are for the exclusive benefit of the Parties hereto and not for the benefit of any other party. Without limiting the generality of the foregoing, JAIL, GER and CN are not beneficiaries of any provision of this Agreement. Except as expressly set forth herein, nothing herein contained shall be taken as creating or increasing any right of any other party to recover by way of damages or otherwise against any of the Parties hereto.

Section 20.3 This Agreement contains the entire understanding of the Parties hereto and supersedes any and all oral understandings between the Parties.

Section 20.4 No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by all Parties to this Agreement.

Section 20.5 All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words terms and phrases in the railroad industry.

Section 20.6 All Article headings are inserted for convenience only and shall not affect any interpretation of this Agreement.

Section 20.7 As used in this Agreement, whenever reference is made to the Trains, locomotives, cars or Equipment of, or in the account of, one of the Parties or Users, such expression means the Trains, locomotives, cars and Equipment in the possession of or operated by one of the Parties or Users and includes such Trains, locomotives, cars and Equipment which are owned by, leased to, or in the account of such Party or User. Whenever such locomotives, cars or Equipment are owned or leased by one Party or User and are in the possession or account of another Party or User, such locomotives, cars and Equipment shall be considered those of the other Party or User under this Agreement.

Section 20.8 This Agreement is the result of mutual negotiations of the Parties hereto; none of whom shall be considered the drafter for purposes of contract construction.

Section 20.9 No Party hereto may disclose the provisions of this Agreement to an outside party, excluding a parent, subsidiary or affiliate company, without the written consent of the other Parties, except as otherwise required by law, regulation or ruling, including, but not limited to, the Michigan Freedom of Information Act, MCL 15.231 *et seq.* and subject to the strictest confidentiality agreements and protective orders the Party can obtain.

Section 20.10 As of the Effective Date, Amtrak and NSR shall have terminated an April 1, 1995 lease agreement and the accompanying maintenance agreement between Amtrak and NSR (as successor in interest to Conrail) governing Amtrak's lease and maintenance of two tracks between the Amtrak-NSR property boundary at MP 145.06 and the west interlocking limit at MP 143.26.

Section 20.11 The Parties shall be excused from performance of any of their obligations hereunder during the time when such non-performance is occasioned by fire, earthquake, flood, extraordinarily severe weather, explosion, wreck, casualty, strike, riot, insurrection, civil disturbance, act of public enemy, embargo, war, or act of God.

Section 20.12 This Agreement shall be construed and interpreted in accordance with the laws of the State of Michigan.

Section 21. ABANDONMENT OF SUBJECT TRACKAGE

NSR shall have, in its sole and absolute discretion, the right to continue to have current use, or, in NSR's sole and absolute discretion, foreseeable future use, of Subject Trackage or any portion thereof. NSR shall have, in its sole and absolute discretion but, subject to securing any necessary regulatory approval, the right to discontinue its use of the Subject Trackage or any portion thereof. In the event that NSR seeks any reasonable or necessary regulatory approval (or, as may be applicable in NSR's sole and absolute discretion, exemption from the need to obtain said regulatory approval) for the discontinuance of its use of the Subject Trackage or any portion thereof, MDOT agrees (1) not to oppose such discontinuance and (2) to provide reasonable cooperation in order to effectuate the same. NSR shall have the sole and absolute discretion to exercise any approval (or, as the case may be, exemption from said approval) so received. MDOT shall not seek any such discontinuance in a manner adverse to the rights of the NSR. If NSR elects to discontinue the Freight Easement and MDOT or a party designated by MDOT files an offer of financial assistance under 49 U.S.C. §10904, NSR shall agree to negotiate with MDOT or MDOT's designee and to convey the Freight Easement to MDOT or MDOT's designee; provided, that MDOT agrees to pay NSR an amount equal to the highest amount offered by another financially responsible party, or \$1.00, whichever is greater. Any portion of the Subject Trackage that NSR exercises approval (or exemption from said approval) to discontinue its use over shall, upon such exercise, become Passenger Exclusive Use Property.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date first above written.

WITNESS

MICHIGAN DEPARTMENT OF
TRANSPORTATION

_____ By _____
Title

WITNESS

NORFOLK SOUTHERN RAILWAY COMPANY

_____ By _____
Title

EXHIBIT 3.5.2

EXISTING

PLAN 1

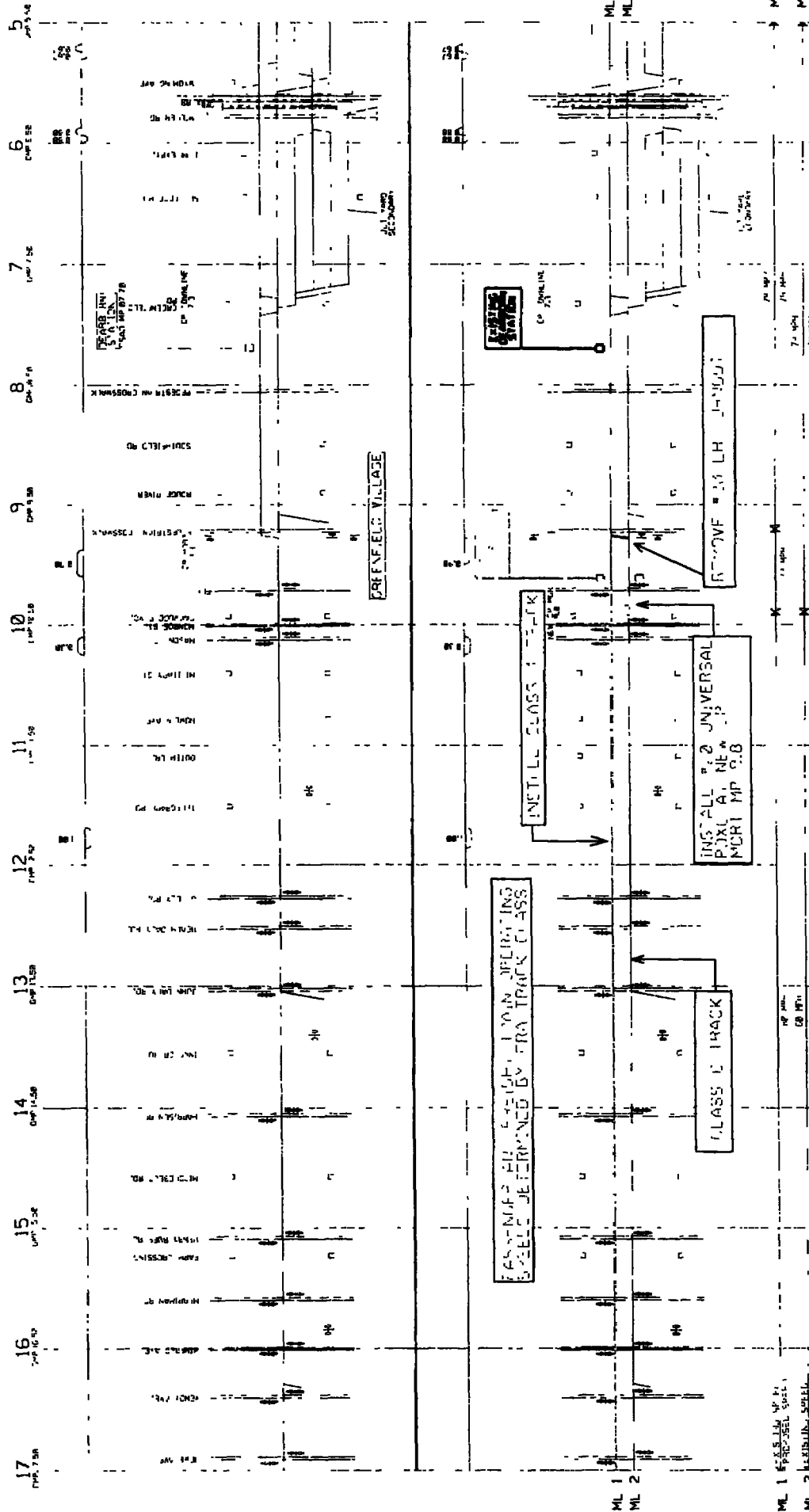


EXHIBIT 3.5.2

DATE 3/13/12
DATE 1/12/12
DATE 3/13/12



REV. 1 05 3/13/2012
REV. 2 05 1/12/2012
CHECKED FOR
APPROVED FOR
DATE 3/12

CMV DOT
Michigan Department of Transportation

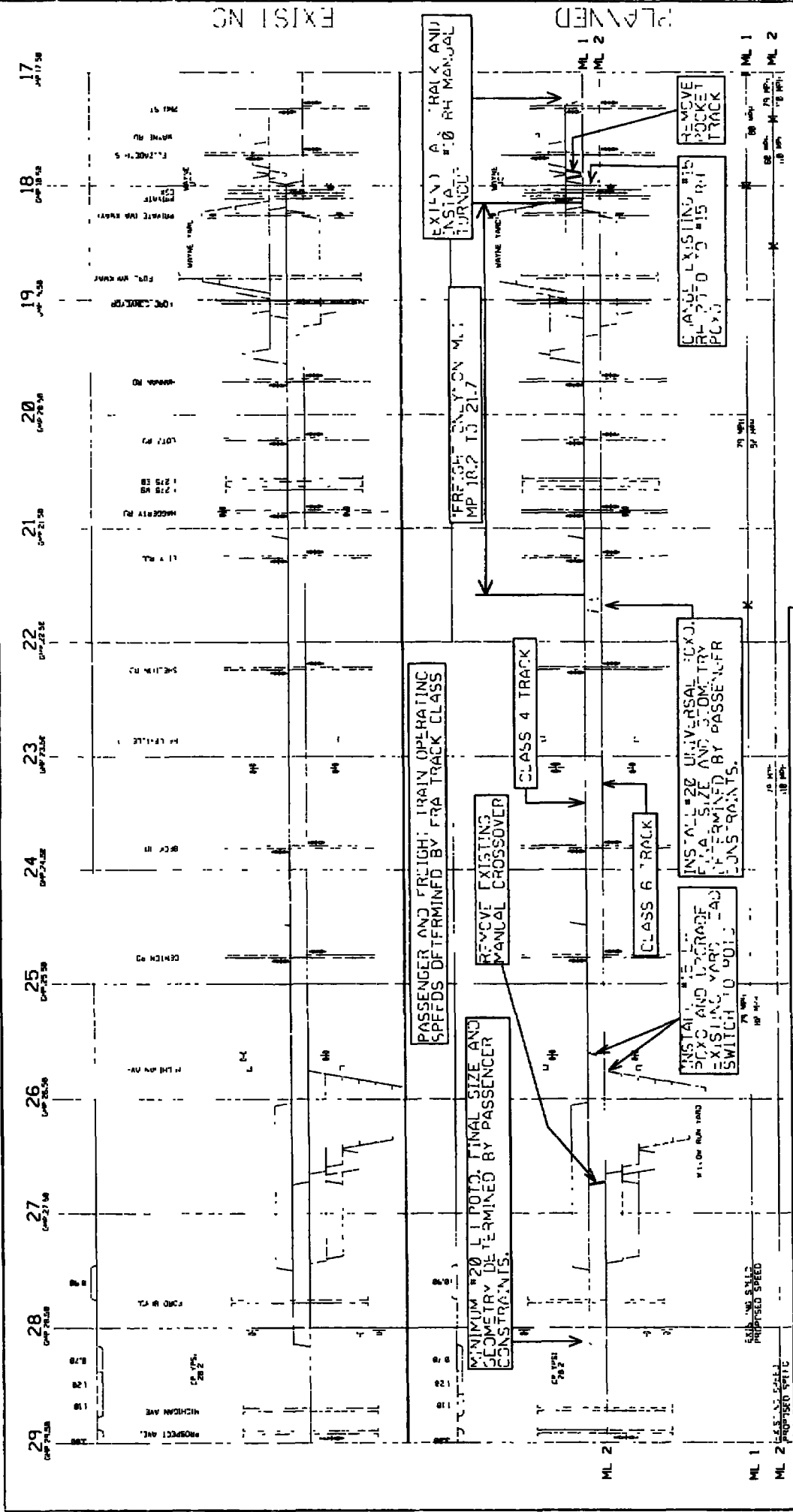
PHOTO POWER OPERATED TURNOUT
PHOTO POWER OPERATED CROSSOVER
LHM LEFT HAND MP, MILEPOST
RHM RIGHT HAND MP, MILEPOST
ML MAIN LINE

APPROVED BY: [Signature]
MODT
AMTRAK
NSR

EXISTING TRACK REMOVAL

NEW TRACK CONSTRUCTION

LEGEND



LEGEND

--- EXISTING TRACK REMOVAL

--- NEW TRACK CONSTRUCTION

EXISTING TRACK REMOVAL

POTO: POWER OPERATED TURNOUT
 POTO: POWER OPERATED CROSSOVER
 LM: LEFT HAND MP: MILEPOST
 RM: RIGHT HAND ML: MAIN LINE

QUANDEL

REVISIONS

REV	DATE	BY	CHKD	APP'D	DESCRIPTION
1	3/13/20	US			
2	3/13/20	US			

EXHIBIT 3.5.2

DATE: 3/13/20
 DATE: 3/13/20
 DATE: 3/13/20

QUANDEL

REVISIONS

REV	DATE	BY	CHKD	APP'D	DESCRIPTION
1	3/13/20	US			
2	3/13/20	US			

EXHIBIT 3.5.2

DATE: 3/13/20
 DATE: 3/13/20
 DATE: 3/13/20

EXHIBIT B

MDOT-NSR AGREEMENT FOR PURCHASE AND SALE

AGREEMENT FOR PURCHASE AND SALE

THIS AGREEMENT, is made and entered into as of this 4th day of October, 2011, by and among **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation (herein referred to as "Seller"), and the **STATE OF MICHIGAN DEPARTMENT OF TRANSPORTATION** (hereinafter referred to as "Purchaser").

WHEREAS, the National Railroad Passenger Corporation ("Amtrak") currently provides intercity passenger service between Kalamazoo and Dearborn, Michigan, over a line of railroad now owned by Seller (the "Seller's ROW");

WHEREAS, Purchaser and Amtrak desire to provide improved intercity passenger service on the Seller's ROW;

WHEREAS, Purchaser applied for two grants under the Federal Railroad Administration's High-Speed Intercity Passenger Rail Program to provide improved intercity passenger service over the Seller's ROW;

WHEREAS, the Federal Railroad Administration awarded the grants for which Purchaser applied on the basis of Purchaser's acquisition of the Seller's ROW;

WHEREAS, Purchaser has been actively negotiating with Amtrak, and Purchaser and Amtrak intend to enter into an agreement whereby Amtrak will operate the intercity passenger service envisioned by Purchaser and for which Purchaser has been awarded the Federal High-Speed Rail funds, provided Purchaser first acquires ownership of the Seller's ROW;

WHEREAS, Purchaser has negotiated with the Seller to purchase the Seller's ROW and to settle operational issues;

WHEREAS, Purchaser and Amtrak discussed the possibility of Purchaser sub-granting the Federal High Speed Rail funds to Amtrak to acquire and improve the line, which acquisition may be effected by Amtrak through the exercise of its authority under 49 U.S.C. § 24311(c), and Amtrak was willing to consider such a sub-grant;

WHEREAS, Purchaser advised Seller that if Seller does not convey the line to Purchaser, Purchaser shall sub-grant the Federal High-Speed Rail funds to Amtrak, and Amtrak was willing to consider exercising its authority under 49 U.S.C. § 24311(c) to condemn Seller's interest in the line; and

WHEREAS, Seller has agreed to convey the line to Purchaser in lieu of being subject to the exercise of Amtrak's condemnation authority under 49 U.S.C. § 24311(c).

W I T N E S S E T H, T H A T:

In consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

SECTION 1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. For purposes of this Agreement, each of the following terms, when used herein with an initial capital letter, shall have the meaning ascribed to it as follows:

Agreement. This Agreement for Purchase and Sale.

Assignment and Assumption Agreement. This term is defined in Section 10.2.6, below.

Changes and/or Additions. Any material improvements to the Improvements-Conveyed constructed after the Closing Date (including but not limited to spur, industrial, side or storage tracks, turnouts, car weighing or tracking facilities, and other material additions, betterments and capital projects), and any construction, reconstruction, alteration and modification thereto, and any retirements therefrom, but excluding ordinary maintenance and repair.

Closing. The closing and consummation of the transactions contemplated hereby.

Closing Date. The date on which the Closing occurs.

Closing Documents. This term is defined in Section 10.2 below.

Conditions. All of the conditions to either party's obligations hereunder described or referred to in Section 11 hereof.

Disclosure. A written disclosure prior to Closing from Seller to Purchaser of any material changes in any of the representations or of any breaches of any of the warranties or agreements made by Seller in Section 8 hereof.

Documents. This term is defined in Section 10.2.6, below.

Earnest Money. The amounts deposited by Purchaser with Seller as earnest money pursuant to the terms of Section 3 hereof.

Effective Date. The date of actual receipt in the case of a notice which is hand delivered or sent by overnight courier service, or the date of receipt or rejection as evidenced by the return receipt if sent by registered or certified mail.

Environmental Laws. Any local, state and federal law, and any regulations and ordinances promulgated thereunder, relating to the environment and environmental conditions, including, without limitation, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §§6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§9601-9637, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.A. §§6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §§1251 et seq., the Clean Air Act, 42 U.S.C. §§7401 et seq., the Clean Water Act, 33 U.S.C. Section 1251 et seq., the Toxic Substances Control Act, 15 U.S.C. §§2601-2692, and the Safe Drinking Water Act, 42 U.S.C. §§300f-300j.

Environmental Obligations. Those obligations described in Section 15.2.

Execution Date. The date that the last party executes this Agreement as shown next to the signatures for Seller and Purchaser below.

Exhibit A-4 Exclusions. That real or personal property which is described in Exhibit A, Paragraph A-4, as being excluded from the sale covered by this Agreement.

Exhibit A-5 Reservations. For Seller and its successors and assigns, those real property or other interests which are described in Exhibit A, Paragraph A-5, as being reserved by Seller from the Property conveyed pursuant to this Agreement.

Exhibit A-6 Covenant. For Seller and its successors and assigns, that covenant which is described in Exhibit A, Paragraph A-6, which will be included in the deed of conveyance about the Property conveyed pursuant to this Agreement and which will run with the land.

Freight Easement. That certain easement reserved by Seller for freight railroad operations attached hereto as Exhibit A 5-1.

Improvements-Conveyed. All improvements, fixtures, structures, buildings, facilities and other improvements of any and every nature located on the Land and all fixtures attached or affixed, actually or constructively, to the Land or to any such improvements, fixtures, structures, buildings, facilities or other improvements, and which are not contained within the Exhibit A-4 Exclusions or the Exhibit A-5 Reservations. Improvements-Conveyed includes, without limitation, signals, bridges, embankments, retaining walls, tunnels, culverts, trestles, grade crossing materials, warning devices, ballast, subgrade, buildings, facilities, communication and signal systems and facilities, wires, pipes, poles, signs, fences, gates and all other railroad appurtenances on the Property.

Insurable. Such title to the Property as is insurable by a title insurer licensed in the State of Michigan at its standard rates on a standard ALTA 1992 owner's title insurance policy, subject to standard preprinted exceptions. Such title insurance

policy may contain an enumeration of the matters that are shown on the Survey, provided that none of such matters otherwise causes the title to the Property to be unmarketable.

Joint Operations Agreement. This term is defined in Section 11.3.2 below.

Land. All those tracts, strips or parcels of land in Wayne, Washtenaw, Jackson, Calhoun and Kalamazoo Counties, Michigan which are described in Paragraph A-1 of Exhibit A, with said Exhibit A being attached hereto and made a part of this Agreement.

Miscellaneous Rights. This term is defined in Exhibit A, Paragraph A-2.

Owner's Affidavit. An affidavit signed by an individual with personal knowledge of the Property substantially in the form of Exhibit B, attached hereto and made a part hereof.

Property. The Land, the Miscellaneous Rights appertaining to the said Land, and the Improvements-Conveyed (but not the Exhibit A-4 Exclusions or Exhibit A-5 Reservations), together with all rights, privileges, members, licenses and easements appurtenant to the Land now or hereafter existing, as described and/or depicted on Exhibit A.

Purchase Price. The purchase price for the Property described in Section 4.

Regulated Substances. Any substance which is controlled, regulated or prohibited under any Environmental Laws.

Seller's Indemnified Parties. The parties include Seller, Seller's parent(s), subsidiaries of Seller and Seller's parent(s), and all affiliates, and officers, directors, employees, agents and contractors of all such parties.

STB. The United States Surface Transportation Board.

Survey. This term is defined in Section 7.1 below.

Trackage Rights. All those agreements between Seller (or a predecessor) and another party for the operation of the railroad equipment of the other party on the tracks of Seller which are part of the Improvements-Conveyed.

1.2 Exhibits and Schedules. Attached hereto and forming an integral part of this Agreement are Exhibits A, B, C, D, E, F G, H, and I, all of which are incorporated into this Agreement as fully as if the contents thereof were set out in full herein at each point of reference thereto.

SECTION 2. PURCHASE AND SALE AGREEMENT.

Subject to and in accordance with the terms and provisions hereof, and in lieu of Amtrak seeking to exercise its authority to condemn rail carrier property interests pursuant to 49 U.S.C. § 24311(c), Seller agrees to sell to Purchaser, and Purchaser agrees to purchase, all of the rights, title and interests of Seller in and to the Property.

SECTION 3. PURCHASER'S PAYMENTS.

Within three (3) business days of the Execution Date, Purchaser shall deposit with Seller the sum of One Hundred Thousand Dollars (\$100,000.00), which shall be deemed Earnest Money, such Earnest Money to be held in an interest-bearing account, and disbursed by Seller as described below.

Earnest Money Disbursements. The Earnest Money shall be disbursed by Seller on the following terms:

3.1 If the Closing of the Property takes place under this Agreement, Seller shall retain the Earnest Money, and the Earnest Money amount shall be credited against the Purchase Price.

3.2 If this Agreement is terminated in accordance with the terms hereof, then Seller shall either retain the Earnest Money or deliver the Earnest Money to the Purchaser, depending upon which party is entitled thereto, within the time periods set forth herein.

3.3 If the Closing does not take place under this Agreement by reason of the failure of either party to comply with its obligations hereunder, then Seller shall either retain the Earnest Money or deliver the Earnest Money to the Purchaser, depending upon which party is entitled thereto, in accordance with the provisions of this Agreement.

3.4 It is agreed that if the Earnest Money is returned to Purchaser under any term of this Agreement, the said Earnest Money shall be returned with any interest earned thereon.

SECTION 4. PURCHASE PRICE.

4.1. Purchase Price.

4.1.1 The purchase price for the Property shall be ONE HUNDRED FORTY MILLION and No/100 DOLLARS (\$140,000,000.00) (USA) (the "Purchase Price").

4.1.2 Purchaser shall pay the Purchase Price to Seller at Closing, less a credit for the Earnest Money. All transfers hereunder shall be by wire transfer.

4.2. Prorations. The following items shall be prorated between Seller and Purchaser as of midnight of the business day immediately preceding the Closing Date:

4.2.1. City, state, and county ad valorem taxes for the calendar year of Closing based on the ad valorem tax bill for the Property if then available for such year, or if not, then on the basis of the ad valorem tax bill for the immediately preceding year (Should such proration prove to be inaccurate on receipt of the ad valorem tax bill for the year of Closing, either Seller or Purchaser may demand by written notice, the Effective Date of which is any time within one (1) year after the date of receipt of such tax bill, a payment from the other correcting such malapportionment).

4.2.2. Sanitary sewer, water and utility charges and assessments, if any, provided, however, either party may elect, prior to Closing, to require that the meters for all utility charges, if any, be read and new accounts therefor established as of midnight of the business day prior to Closing, whereupon Seller shall be responsible for and shall pay for all such charges relating to the period prior to the Closing Date, and Purchaser shall pay and be responsible for all such charges from and after the Closing Date.

4.2.3. Any other assessments and special assessments of any type on the Property.

4.2.4. Subject to the provisions of Paragraph A-4 of Exhibit A, all such other rental, income, taxes, utilities, charges and assessments customarily prorated in commercial real estate transactions in the Jackson, Michigan area.

SECTION 5. TITLE TO THE PROPERTY.

5.1. Form of Conveyance. At Closing, Seller shall convey the Property to Purchaser by quitclaim deed subject to the following:

5.1.1. General real estate taxes for the year of Closing and subsequent years not yet due and payable;

5.1.2. Existing laws, orders and regulations, including applicable zoning laws and regulations;

5.1.3. Except as is otherwise provided in this Agreement, all tenancies, encumbrances, easements, rights, Trackage Rights, conditions, reservations, leases, licenses, permits, privileges, agreements, third party agreements, covenants, conditions, restrictions, reservations, rights of re-entry and possibilities of reverter, whether or not of record or as may be apparent by an inspection or survey of the Property and affect the Property as of the Execution Date or the Closing Date;

5.1.4. Whatever rights the public may have to the use of any roads, alleys, bridge or streets on or crossing the Property;

5.1.5. Streams, rivers, creeks and waterways passing under, across or through the Property;

5.1.6. All exclusions, reservations and covenants described in this Agreement, including specifically the Exhibit A-4 Exclusions, Exhibit A-5 Reservations and the Exhibit A-6 Covenants; and

5.1.7. Any pipes, wires, poles, cables, culverts, drainage courses or systems, or other facilities on or crossing the Property, together with the rights (if any) of persons entitled to maintain, repair, renew, replace, use or remove the same, excluding all Miscellaneous Rights, as defined and described in Section A-2 of Exhibit A.

5.2. Title Examination.

5.2.1. The Purchaser shall have ninety (90) days after the Execution Date to examine title to the Property and to furnish Seller with a written statement of objections that, in Purchaser's sole judgment, affect the marketability and insurability of said title. Seller shall have thirty (30) days after receipt of such objections to satisfy them.

5.2.2. If Seller does not satisfy such Purchaser objections (or if Seller chooses not to satisfy one or more of such objections, either initially or thereafter) within the prescribed time, then, at Purchaser's option evidenced by written notice to Seller, Purchaser may either:

a. terminate this Agreement; or

b. waive any or all objections not cured by Seller and proceed to close hereunder without diminution in the Purchase Price.

5.2.3. In the event this Agreement is terminated pursuant to Section 5.2.2(a), Purchaser shall be entitled to a refund of the Earnest Money, and neither party shall be liable to the other for damages on account of the termination, except for any liability or indemnity pursuant to any provision hereof that, by its terms, survives any termination of this Agreement.

5.2.4. Upon Purchaser's failure to terminate this Agreement under and within the timeframes set forth in this Section 5.2, Purchaser shall be deemed to have waived any or all objections not cured by Seller.

5.3. Liens and Mortgages. Any money liens, mortgages or trusts encumbering the Property shall not be considered a title defect as provided for in Section 5.2; however, Seller expressly covenants that before Closing, it will secure whatever releases are required to free the Property from all such money

liens, mortgages or trusts, or shall indemnify Purchaser against enforcement of all such money liens, mortgages or trusts in the forms attached hereto as Exhibit D.

5.4. Title Policy. Purchaser may, at its expense, elect to obtain a standard A.L.T.A. owner's policy of title insurance pursuant to which title to the Property shall be insured, provided, however, that procurement of said policy shall not be a precondition to Closing.

SECTION 6. PURCHASER'S INSPECTION.

6.1. Inspection. Purchaser shall have the privilege at any time during the existence of this Agreement of going upon the Land with Purchaser's agents, representatives or contractors to inspect, examine, survey and study and make other engineering, Phase 1 environmental or landscaping tests or surveys which it may deem necessary on the Land; provided, however, that:

6.1.1. Purchaser executes and delivers to Seller a right of entry agreement, the form of which is attached hereto as Exhibit E-1;

6.1.2. no grading, test borings or other invasive tests or surveys shall be done and no trees or bushes shall be cut except for bushes necessary to clear the view for survey purposes;

6.1.3. any formal tests, surveys or studies shall be performed by one or more contractors hired by Purchaser;

6.1.4. no contractor shall be permitted to enter the Land unless said contractor first executes and delivers to Seller Seller's standard form Right of Entry Agreement, a copy of which is attached to this Agreement as Exhibit E-2, and providing whatever proof of the insurance may be required by the Right of Entry Agreement; and

6.1.5. any inspections or examinations conducted by employees of Purchaser shall only be conducted in the presence of a representative of Seller, and Purchaser shall require its employees to follow all of Seller's safety instructions as a condition of entering the Land.

6.2. Liability. Seller shall in no way be liable or responsible for any activities of Purchaser upon the Land taken pursuant to this Section 6. Purchaser shall be responsible for any and all claims arising out of its own acts and/or omissions, and those of its employees, during the performance of inspections or examinations pursuant to this Section 6; provided, however, that although this provision is intended to provide a waiver by Purchaser of any and all claims against Seller covered hereby, it is not intended to nor will it be interpreted as giving a right of indemnification to Seller by Purchaser, either by contract or by law, for claims arising out of the performance of this Section 6.

6.3. Liens. Should anyone attempt to file a lien against the Land by reason of Purchaser's activities pursuant to this Section 6, Purchaser shall have the same canceled, satisfied and discharged of record within ten (10) business days after actual notice thereof.

6.4. Restoration. Purchaser shall promptly restore the Land to its condition as of the Execution Date after all tests or surveys conducted pursuant to this Section 6.

6.5. Copies. If requested by Seller, Purchaser shall at no cost to Seller promptly give Seller a complete copy of any or all written material containing information about inspections, tests, surveys, studies, examinations, procedures, investigations or reports conducted or prepared pursuant to this Section 6, with the exception of material protected by the attorney-client privilege and/or work product doctrine.

6.6. Due Diligence. Except with respect to the representations and warranties of Seller set forth in Section 8.1, Purchaser shall rely solely on Purchaser's due diligence in determining whether to proceed to the Closing.

SECTION 7. SURVEY.

7.1. Survey. Within ninety (90) days after the Execution Date, Purchaser may cause (but Purchaser is not required to produce), at Purchaser's expense, a boundary survey (the "Survey") to be conducted of the Land by a land surveyor duly registered under the laws of the State of Michigan. The Survey shall include a depiction of the improvements upon the Property. Purchaser shall prepare an accurate legal description of the Land (excluding the A-4 Exclusions, as applicable) from the Survey, and such legal description shall be used in the deed pursuant to which title to the Property shall be conveyed at Closing. The Survey and legal description are subject to the approval of Seller, which approval shall not be unreasonably withheld. If Purchaser shall decide not to secure a survey within the said time period, then Seller shall prepare a general written description of the line of railroad to be conveyed hereby based on a reference to the center line of the track, and which shall, in Seller's opinion, reasonably describe the Land and Property to be conveyed.

7.2. Survey Title Exceptions. If the Survey reveals any matters which, in Purchaser's sole judgment, cause the title to the Property not to be marketable or Insurable, then Purchaser shall have those rights and remedies with respect thereto as are set forth in Section 5.2.2 above.

7.3. Subdivision. In the event the conveyance contemplated hereunder shall constitute a subdivision, and if as a prerequisite to the recording of such conveyance it shall become necessary to comply with applicable subdivision ordinances and regulations, Purchaser agrees that it will, with reasonable diligence, arrange and pay for the filing of any necessary plat with the

appropriate authorities. Purchaser will assume the entire cost of whatever streets, sewers and utilities are required in connection with such subdivision, and will do all other acts and file such other papers as may be necessary to obtain any and all required approvals thereof. Seller agrees to execute such reasonable documents and plats as are reasonably necessary to accomplish such subdivision. All costs, expenses and attorneys' fees incurred in complying with any such subdivision ordinances and regulations, including, without limitation, dedication and installation of streets, sewers and utilities, shall be borne solely by Purchaser, and Purchaser agrees that Purchaser shall be solely responsible for, and pay for, all claims, demands, suits, costs or expenses arising or in any way growing out of any failure by Purchaser to fully comply with such subdivision ordinances and regulations, and Purchaser hereby releases Seller from all such claims, demands, suits, costs or expenses.

SECTION 8. REPRESENTATIONS AND WARRANTIES.

8.1. Seller's Representations. Seller hereby represents and warrants to Purchaser, as of the Execution Date, as follows:

8.1.1. Assessments. To Seller's actual knowledge, no assessments have been made against the Property that are unpaid (except ad valorem taxes for the current year), whether or not they have become liens.

8.1.2. Boundary Lines of Land. To Seller's actual knowledge, there is no pending litigation or dispute concerning the location of the lines and corners of the Land.

8.1.3. No Condemnation. Except as described in the recitals above, to Seller's actual knowledge there is no pending (or to Seller's actual knowledge, threatened) condemnation, expropriation, eminent domain, change in grade of public street or similar proceeding affecting all or any portion of the Property.

8.1.4. Authorization. Seller has taken all necessary corporate action to authorize the execution of this Agreement, and those persons executing this Agreement on behalf of Seller are authorized to do so; provided, however, that no officer, director, shareholder, beneficial owner, agent or employee of Seller shall be personally liable for any obligation hereunder.

8.1.5. Knowledge of Seller. As used herein and elsewhere in this Agreement, the phrase "actual knowledge of Seller" or similar references shall refer to the actual knowledge of Linda V. Hill, General Attorney Real Estate, an employee of Seller's affiliate, as of the Execution Date and after reasonable inquiry with regard to the representations made herein.

8.1.6. Good Standing. Seller is a Virginia corporation in good standing and registered to do business in the state of Michigan.

8.1.7. Binding. This Agreement is a legal, valid and binding agreement of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered a proceeding in equity or at law).

8.1.8. No Violation. To Seller's actual knowledge, entering into this Agreement by Seller is not in violation of any law or order.

8.1.9. Third Party Rights. While not waiving its right only to provide a quitclaim deed to Purchaser at closing, Seller states that to the best of Seller's actual knowledge, no third party (including, without limitation, any affiliate of Seller) has rights to purchase any portion of the Property.

8.1.10. No Consummated Abandonments. From June 1, 1999 to present, there have been no consummated abandonments, as that term is used in the Interstate Commerce Commission Termination Act of 1996, concerning the main line trackage of Seller which are part of the Improvements-Conveyed.

8.1.11. Trackage Rights Agreements. To Seller's actual knowledge, the list of Trackage Rights agreements contained in Exhibit I are all of the Trackage Rights held by other rail carriers on the Improvements-Conveyed. If, after the Closing Date, it is determined that a rail carrier held additional Trackage Rights on any portion of the Property prior to the Closing Date, and such Trackage Rights still exist, Seller shall, at its expense, exercise commercially reasonable efforts to cause such Trackage Rights holders to discontinue and release such Trackage Rights. Seller shall permit Purchaser to review pleadings that Seller intends to file in order to effectuate these efforts, and Purchaser shall bear the cost of its attorneys' fees and other expenses in performing this review.

8.1.12. Assigned Agreements and Instruments. To Seller's actual knowledge, Seller is not in material breach of any agreement or instrument that will be assigned to Purchaser as part of the conveyance of the Miscellaneous Rights.

8.1.13. Environmental Liabilities. Other than the matters contained on Exhibit H, from June 1, 1999 to present, to Seller's actual knowledge, there have been no releases of hazardous materials by Seller on the Property that are reportable to a state or federal government agency under applicable laws which required investigation and/or remediation activities under applicable laws, and at which such required investigation and/or remediation has not previously concluded.

8.1.14. Disclaimer. Other than as expressly set forth in this Agreement, Seller has not and does not hereby make any express or implied representation or warranty or give any indemnification of any kind to Purchaser concerning the Property. This disclaimer is set out in more detail in Section 14.1 of this Agreement.

8.2. Purchaser's Representations. Purchaser hereby represents and warrants to Seller, as of the Execution Date and as of the Closing Date, as follows:

8.2.1. Binding. This Agreement is a legal, valid and binding agreement of Purchaser, enforceable against Purchaser in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered a proceeding in equity or at law).

8.2.2. No Violation. Entering into this Agreement by Purchaser is not a violation of any law or order.

8.2.3 Authorization. Purchaser has taken all necessary action to authorize the execution of this Agreement, and those persons executing this Agreement on behalf of Purchaser are authorized to do so; provided, however, that no officer, director, beneficial owner, agent or employee of Purchaser shall be personally liable for any obligation hereunder.

8.3. Survival and Breach. Except as otherwise expressly provided herein, Seller's and Purchaser's representations and warranties in this Section 8 shall survive for a period of six (6) years after the Closing Date and then shall expire and terminate.

SECTION 9. ADDITIONAL COVENANTS.

Seller does hereby covenant and agree with respect to the Property as follows:

9.1.1 No New Encumbrances. From and after the Execution Date to the date and time of Closing, Seller shall not, without the prior written consent of Purchaser, convey any portion of the Property or any rights therein, nor enter into any conveyance or other agreement or amendment to agreement granting to any person or entity any rights with respect thereto or any part thereof, or any interest whatsoever therein, or any option thereto, unless such conveyance, right or other interest is subordinate to the rights of Purchaser under this Agreement, and any such conveyance or other agreement entered into in violation of this Section 9.1 shall be null and void and of no force or effect. Seller further agrees that from and after the Execution Date, Seller shall not fail to make any payments to any person or entity who, as a result of such failure, would have the right to claim any

lien rights with respect to any of the Property or any interest of Seller therein. Seller shall have the right to contest any such payment so long as Seller bonds off any liens filed with respect thereto or provides Purchaser with reasonably adequate security with respect thereto.

9.2. Payment of Taxes. Without waiving any right to contest any and all amounts which may be levied against Seller for ad valorem taxes, Seller shall continue to pay all ad valorem taxes for which it is responsible under this Agreement in a timely way.

9.3. No Lease Modifications. To the extent that any third-party agreement is of a type that will be assigned by Seller to Purchaser at Closing, Seller agrees that it will not modify any such third-party agreement during the pendency of this Agreement.

9.4. Compliance with Contracts. From and after the Execution Date to the date and time of Closing, Seller agrees to remain in material compliance with all requirements related to the Miscellaneous Rights, and make all payments due thereunder and not waive any default thereunder.

9.5. Survival and Breach. Except as otherwise expressly provided herein, Seller's and Purchaser's covenants in this Section 9 shall survive for a period of six (6) years after the Closing Date and then shall expire and terminate.

SECTION 10. CLOSING.

10.1 Time and Place. The Closing shall be held at such place that Seller and Purchaser may agree, at such time and on such date as may be specified by written notice from Purchaser to Seller not less than five (5) business days prior thereto; provided, however, the Closing shall be held no sooner than twenty-one (21) days, and not later than one hundred eighty (180) days after the date that Purchaser has obtained the determination from the STB, contemplated by Section 11.3.1 hereof, that the consummation of the transaction contemplated by this Agreement does not require STB exemption or approval. Closing may only be postponed pursuant to an agreement by Seller and Purchaser in writing, but not otherwise.

10.2 Closing Documents. For and in consideration of, and as a condition precedent to Purchaser's delivery to Seller of the Purchase Price, Seller shall deliver to Purchaser at Seller's expense, on the Closing Date (all of which shall be duly executed and acknowledged where required and shall survive the Closing) the following documents (collectively, the "Closing Documents"):

10.2.1. A quitclaim deed transferring Seller's interest in the Property (subject to the Exhibit A-4 Exclusion, the Exhibit A-5 Reservations, and the Exhibit A-6 Covenant) to Purchaser as provided in Section 5.1 above; the form of the deed being as contained in Exhibit F;

10.2.2 An Owner's Affidavit in the form attached hereto as Exhibit B;

10.2.3 A Closing Statement that shows the Purchase Price, the various credits to each of Seller's and Purchaser's accounts contemplated hereby, the disbursements made from the proceeds of each of Seller and Purchaser as are contemplated by this Agreement, and such other agreements as Seller and Purchaser may approve;

10.2.4 An affidavit with respect to Seller's non-foreign status sufficient to comply with the requirements of Section 1445 of the Internal Revenue Code and all regulations applicable thereto;

10.2.5 A certificate of incumbency evidencing the authority of the individual officer executing the Closing Documents on behalf of Seller; and

10.2.6 An agreement ("Assignment and Assumption Agreement") in the form attached hereto as Exhibit G, duly signed by each party whereby Seller assigns to Purchaser all leases, easements, licenses, permits, agreements and privileges (together, hereafter called "Documents") pertaining to the Property and which are not reserved by Seller under Paragraph A-4 of Exhibit A. Within sixty (60) days of the Execution Date, Seller shall prepare and send Purchaser a list of the Documents to be assigned by Seller hereunder. Seller will also promptly thereafter provide Purchaser with a CD containing a digital image of the Documents. While Seller will diligently seek out all such Documents in the said sixty (60) day period, if Seller later discovers any other Documents prior to Closing, Seller shall promptly provide Purchaser with a copy of the same. It is agreed that if any of the Documents to be assigned pertain partly to the Property and partly to other property now or formerly owned by Seller, the Assignment and Assumption Agreement will assign to Purchaser only the portion of the Documents which relate to the Property. Originals of the Documents (except for one which is only partially assigned, in which case a photocopy will be provided) will be delivered by Seller to Purchaser within ninety (90) days after the Closing Date.

10.3 Delivery of Purchase Price. Subject to the other terms hereof, Purchaser shall deliver the Purchase Price at the Closing in accordance with the terms of Section 4 above.

10.4 Costs. At Closing, Seller and Purchaser shall pay their own respective costs incurred with respect to the consummation of the transactions contemplated hereby. Notwithstanding the foregoing, it is expressly agreed that Purchaser shall pay any and all transfer taxes or similar charges incident to the conveyance of title to the Property to Purchaser, the cost of recording the deed, the costs of examining title to the Property, the premiums on any title insurance policy it purchases, the cost of the Survey and all costs incurred by Purchaser

with respect to its examination of the Property, including the fees and expenses of architects and engineers employed by Purchaser. Each party shall pay their respective attorneys' fees.

SECTION 11. CONDITIONS.

11.1. Purchaser's Conditions. All of the following shall be conditions to Purchaser's performance hereunder and must be satisfied or waived by Purchaser at or prior to the Closing or within the time frames found in this Agreement:

11.1.1 Any conditions regarding title to the Property set forth in Section 5 above shall have been satisfied or waived as outlined in Section 5

11.1.2 Subject to any Disclosures which are acceptable pursuant to the terms hereof or which Purchaser has waived, the representations and warranties of Seller as they are set forth in Section 8 above shall be true, accurate and complete;

11.1.3 Seller shall have executed and delivered the documents and instruments contemplated by Section 10.2 above;

11.1.4 Seller shall not have exercised any right to terminate this Agreement pursuant to the express terms hereof;

11.1.5 Seller shall have performed and complied fully with all other agreements and requirements that are required by this Agreement to be performed or complied with by Seller;

11.1.6 Within ninety (90) days of the full execution of this Agreement, Purchaser shall have entered into a Cooperative Agreement with the Federal Railroad Administration governing the Purchaser's receipt of federal funds for the Purchase Price and for the contemplated capital improvements for the Property;

11.1.7 Federal funds for the Purchase Price and for the contemplated capital improvements for the Property shall have been obligated within ninety (90) days of the full execution of this Agreement and shall not have been rescinded;

11.1.8 Within ninety (90) days of the Execution Date, the Michigan Legislature shall have appropriated sufficient non-federal funds to allow Purchaser to meet the non-federal match requirement on the applicable federal funds;

11.1.9. No material loss or damage to the Property by fire, other casualty or condemnation, of the type described in Section 12.1, shall have occurred from or after the Execution Date;

11.1.10 Seller shall have performed or be in compliance with all covenants required by Section 9;

11.1.11 For a period expiring one hundred eighty (180) days after the Execution Date, Purchaser shall have not terminated this Agreement, in its sole discretion, due to an environmental condition of any kind or due to any physical condition that is not satisfactory to Purchaser and that was revealed by any inspection or due diligence activities taken pursuant to Section 6;

11.1.12 For a period expiring one hundred eighty (180) days after the Execution Date, Purchaser shall not have objected to any of the exceptions to title listed in Section 5.1;

11.1.13 The representations and warranties of Seller in Section 8.1 are still accurate;

11.1.14 Within sixty (60) days of the Execution Date, Seller shall provide Purchaser with a list indicating, to the best of Seller's actual knowledge (a) all pending or threatened litigation or proceedings by any organization, person, individual or governmental agency against Seller with respect to the Property or against the Property that are not otherwise disclosed in this Agreement; and (b) any notices of violations of law, municipal or county ordinances, or other legal requirements with respect to the Property (or any part thereof) or with respect to the use, occupancy, or construction thereof. The Purchaser shall have thirty (30) days after Purchaser provides the list to furnish Seller with a written statement of objections that, in Purchaser's sole judgment, adversely affect Purchaser's intended use of the Property. Seller shall have thirty (30) days after receipt of such objections to satisfy them, but shall not have the obligation to do so. If Seller does not satisfy such Purchaser objections (or if Seller chooses not to satisfy one or more of such objections, either initially or thereafter) within the prescribed time, then, at Purchaser's option evidenced by written notice to Seller, Purchaser may either:

a. terminate this Agreement; or

b. waive any or all objections not cured by Seller and proceed to close hereunder without diminution in the Purchase Price.

In the event this Agreement is terminated pursuant to this Section 11.1.14, Purchaser shall be entitled to a refund of the Earnest Money, and neither party shall be liable to the other for damages on account of the termination, except for any liability or indemnity pursuant to any provision

hereof that, by its terms, survives any termination of this Agreement. Upon Purchaser's failure to terminate this Agreement under and within the timeframes set forth in this Section 11.1.14, Purchaser shall be deemed to have waived any or all objections not cured by Seller; and

11.1.15 Within ninety (90) days of the Execution Date, Purchaser and Amtrak shall have entered into an agreement governing the operation by Amtrak of up to 110-mph passenger service over the Seller's ROW.

11.2. Seller's Conditions. All of the following shall be conditions to Seller's performance hereunder and must be satisfied or waived by Seller at or prior to the Closing or within the time frames found in this Agreement:

11.2.1 Seller shall not be required to close if there shall be a labor dispute or work stoppage imminent or in effect on any of the railroad lines of Seller as a result of or related to the execution or implementation of this Agreement;

11.2.2 The representations and warranties of Purchaser in Section 8.2 are still accurate; and

11.2.3 Within ninety (90) days of the Execution Date, the Board of Directors of Seller's parent company, Norfolk Southern Corporation, shall have approved this Agreement, which approval shall be exercised in the said Board's sole discretion.

11.3 Purchaser's and Seller's Conditions. All of the following shall be conditions to Buyer's and Seller's performance hereunder and must be satisfied or waived by Buyer and Seller at or prior to the Closing or within the time frames found in this Agreement:

11.3.1 Notwithstanding anything to the contrary herein, neither Seller nor Purchaser shall be obligated to close unless and until Purchaser has obtained a determination from the STB that, pursuant to the so-called "State of Maine" precedent, no STB approvals or exemptions from the need to receive such approvals are necessary for the consummation of the transaction covered by this Agreement and the Joint Operations Agreement (as defined below). Purchaser agrees that Purchaser will promptly, on Purchaser's and Seller's behalf, at Purchaser's sole cost and expense, prepare and (after providing and receiving comments and consent from Seller for the same) file with the STB, all applications, petitions, requests, notices or other necessary filings, in order to seek such STB determination for the transaction covered by this Agreement and the Joint Operations Agreement. In addition, it is a condition to Seller's and Purchaser's obligation to close that any STB order or other action not contain or be subject to any condition that Seller or Purchaser

determine to be unacceptable, including but not limited to the imposition of labor protective conditions, which shall be deemed unacceptable without the need to provide notice thereof. Any other conditions imposed by the STB shall be presumed to be acceptable unless Seller or Purchaser (as the case may be) gives the other notice within fifteen (15) business days of the service date of the STB order or other written action that the condition is unacceptable, and the reason therefor. If the STB order or other action imposes labor protective conditions or either party does give such notice of unacceptability, then (i) the provisions of this Agreement concerning the time for Closing shall not be effective, (ii) the Seller shall return the Earnest Money to Purchaser, and (iii) this Agreement shall be terminated and the parties shall have no further liability to each other, except for any liability or indemnity pursuant to any provision hereof that, by its terms, survives any termination of this Agreement.

11.3.2 The Parties shall have entered into a Joint Operations Agreement, the essential elements of which are summarized and set forth in Exhibit C hereto.

11.3.3 The Parties shall have entered into an agreement governing the engineering, funding and construction of a second track between MP 9.3 and MP 17.2, which engineering, funding and construction shall be accomplished at the expense of persons other than Seller.

11.3.4 Neither of the Parties shall be prevented from fulfilling their respective obligations under this Agreement as a result of legislative, judicial, or administrative action.

11.4 Non-Compliance. If either Party has not satisfied any of the applicable Conditions set forth in this Section 11 as of the Closing Date this Agreement shall be terminated and the Parties shall have no further liability to each other, except for any liability or indemnity pursuant to any provision hereof that, by its terms, survives any termination of this Agreement. Should the Agreement be terminated pursuant to this Section and the Earnest Money is not otherwise obligated to one or the other Party pursuant to other provisions of this Agreement, the Earnest Money shall be returned to Purchaser.

11.5 Default.

11.5.1 In the event of default by Purchaser to purchase the Property under the terms of this Agreement, Seller's sole remedy shall be to receive the Earnest Money as liquidated damages, in which event this Agreement shall become null and void, and all parties hereto shall thereupon be released of all further liability hereunder, except for any liability or indemnity pursuant to any provision hereof that, by its terms,

survives any termination of this Agreement. It is hereby agreed that, without resale, Seller's damages will be difficult to determine and that the Earnest Money constitutes a reasonable liquidation thereof and is intended not as a penalty, but as full liquidated damages. In the event of a default by Purchaser of the other terms of this Agreement, including those obligations that will survive Closing, Seller shall retain all remedies available in law or equity.

11.5.2 In the event of a default by Seller under the terms of this Agreement, Purchaser shall have the right to (i) obtain a refund of the Earnest Money, in which event this Agreement shall become null and void, and all parties hereto shall thereupon be released of all further liability hereunder, except for any liability or indemnity pursuant to any provision hereof that, by its terms, survives any termination of this Agreement, or (ii) enforce this Agreement by action of specific performance of Seller's obligations under this Agreement or otherwise.

SECTION 12. RISK OF LOSS AND CONDEMNATION.

12.1. Loss. Except for any damage for which Purchaser is responsible under Section 6 hereof, prior to Closing, Seller shall bear all risk of loss or damage to the Property by fire, other casualty or condemnation prior to the Closing. Notwithstanding the foregoing, Seller shall have no duty whatsoever to rebuild any improvements of any nature or type on the Property or otherwise to restore the Property in the event of fire, flood, or other casualty howsoever caused or condemnation. However, it is agreed that Purchaser shall not be required to close and, as is provided in Section 11.1.10 it shall be a condition to Purchaser's duty to close at Closing that there be the absence of a material loss as to any Improvements-Conveyed of any nature or type on the Property other than any loss for which Purchaser is responsible under Section 6 hereof.

12.2. Eminent Domain. If, at any time prior to the Closing, any action or proceeding is filed under which the Property, or a substantial portion thereof, may be taken pursuant to any law, ordinance or regulation, or by condemnation or the right of eminent domain, then, at the option of either Seller or Purchaser:

12.2.1. this Agreement shall be terminated, and the Earnest Money shall be refunded to Purchaser, and each party shall have no further liability to the other except for any liability or indemnity pursuant to any provision hereof that, by its terms, survives any termination of this Agreement, or

12.2.2. this Agreement shall remain in full force and effect and Seller, at the time of Closing hereunder, shall transfer and assign to Purchaser all of Seller's right, title and interest in any proceeds received or which may be received by the taking, or a sale in lieu thereof, said option to be exercisable by either party by delivering to the other written notice of

such exercise on or before the thirtieth (30th) day following the day on which the respective party receives notice that such suit has been filed.

12.3. Notice of Condemnation. If at any time prior to the Closing all or any portion of the Property is taken by condemnation or eminent domain or any proceeding in condemnation or eminent domain, or Seller becomes aware of the threat of such taking, Seller shall promptly give written notice thereof to Purchaser.

SECTION 13. ASSIGNMENT.

This Agreement may not be assigned by Purchaser to any other party without the written consent of Seller, which consent may be withheld for any reason, except in the case of an assignment to an entity of which Purchaser has a controlling interest or is the general partner, in the case of a partnership, or a manager, in the case of a limited liability company. Seller expressly reserves the right to assign or delegate all or any part of Seller's rights and duties hereunder with respect to all or any of the Property to one or more third parties, including without limitation a qualified intermediary as defined by Treasury Regulation Section 1.1031(K)1(g)(4), in connection with a tax deferred exchange pursuant to Section 1031 of the Internal Revenue Code (this last type of assignment being called a "Intermediary Assignment"), provided, however, that except for an Intermediary Assignment, any such assignment and/or delegation shall be subject to the consent of Purchaser, such consent not to be withheld or delayed unreasonably.

SECTION 14. SELLER DISCLAIMERS; PURCHASER RELEASE AND WAIVER.

14.1. Disclaimers.

14.1.2. Other than as expressly set forth in Section 8 of this Agreement, Seller has not made and does not hereby make, and Purchaser acknowledges that neither Seller nor any of its agents or representatives have made and Seller is not liable for or bound in any manner by:

14.1.2.1. any express or implied warranties, guarantees, promises, statements, inducements, representations or information or any indemnification of any kind to Purchaser pertaining to the Property or any part thereof;

14.1.2.2 Seller's title to the Property;

14.1.2.3 the condition or suitability of the Property, including, but not limited to, the condition of the soil or the presence of Regulated Substances or other contaminants in the soil or improvements, whether known or unknown;

14.1.2.4 the size, zoning, income potential, expenses or operation of the Property;

14.1.2.5 the uses that can be made of the same or in any manner or thing with respect thereof, including, without limitation, any existing or prospective leasing or occupancy of all or any part thereof; or

14.1.2.6 its compliance with any statute, ordinance or regulation, including, but not limited to, zoning laws or Environmental Laws.

Purchaser shall perform at its own expense and rely solely upon its own independent investigations, inspections, tests, surveys, studies, procedures and investigations concerning the physical condition of the Property (including, but not limited to, an environmental assessment as provided in Section 6) and compliance of the Property with any applicable law and regulations.

14.2 Moreover, in furtherance of such statements, Purchaser acknowledges and agrees that:

14.2.2 Purchaser is purchasing the Property in "AS-IS, WHERE-IS" CONDITION AND, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 8, WITHOUT ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF TITLE, MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, AND PURCHASER EXPRESSLY WAIVES ANY CLAIM IT MIGHT OTHERWISE HAVE AGAINST SELLER'S INDEMNIFIED PARTIES FOR PATENT OR LATENT DEFECTS TO THE PROPERTY, INCLUDING WITHOUT LIMITATION, CLAIMS FOR EXISTING CONTAMINATION ARISING FROM THE PRESENCE OF REGULATED SUBSTANCES ON, AT OR UNDER THE PROPERTY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, OR OTHER ENVIRONMENTAL LAWS.

14.2.3 Purchaser is purchasing the Property subject to all existing laws, statutes, ordinances, codes, rules and regulations (many of which will not apply upon Purchaser's acquisition of title).

14.2.4 Upon sufficient notice and at a time mutually and reasonably acceptable to the Parties, and in no event less than five (5) business days after the Execution Date but not after one-hundred eighty (180) days after the Execution Date (so long as said 180th day is at least twenty-one (21) days prior to the Closing Date), Seller agrees to permit Purchaser's representatives to review at Seller's Atlanta, Georgia offices during Seller's normal business hours (i) any environmental test results or reports (if any) that Seller has in its possession and can locate pertaining to the Property, and (ii) any other property-related documents Seller has in its

possession and can locate pertaining to the Property, including, but not limited to, valuation maps, track charts, bridge and other drawings about or relating to the Property, and deeds, easements, licenses, leases, encroachment agreements and other documents about any interest in or relating to the Property. Seller agrees to deliver a copy of such material to Purchaser at Closing. Seller may satisfy the requirements of this paragraph by means of providing the documents herein described in digital image on a CD and may exclude any document that is protected by a privilege.

14.2.5 Except as otherwise provided in the Agreement, Purchaser agrees that, after the Closing Date, Purchaser will make no claims for, and hereby waives as to Seller's Indemnified Parties, any claims that arise at any time out of, in respect to, or in connection with the physical condition, safety, utility, adequacy, merchantability, value, suitability or fitness of the Property, or any portion thereof, or any defects therein, including those relating to (a) public or private street, bridge, underpass or other crossings, (b) any structures that may be contained on the Property, (c) the existing flow or obstruction of surface or subsurface waters, (d) the stability of the soil on, above or adjacent to the Property (except for interests retained by Seller), (e) support for or by adjacent property or the collapse of soil or other materials or buildings onto adjacent property, or (f) any other existing condition of the Property, including any existing contamination from Regulated Substances on, at or under the Property. After the Closing Date, Purchaser shall have all obligations imposed by building or construction codes or licensing or zoning requirements, including obligations relating to licensing, permits, notices and fees, and all Environmental Obligations as set forth in Section 15.

14.2.6 This Section 14 shall survive the Closing of the transactions contemplated herein.

SECTION 15. RESPONSIBILITY FOR ENVIRONMENTAL AND OTHER MATTERS.

15.1. Permit Matters. As between the parties, and except as allocated pursuant to the Joint Operations Agreement, which in the event of a liability allocated thereby shall govern, on and after the Closing Date, responsibility for compliance with Environmental Laws as they pertain to the Property and responsibility for acquiring, maintaining and complying with governmental approvals required under Environmental Laws and complying with monitoring, record keeping or reporting obligations imposed under applicable Environmental Laws shall be borne solely by Purchaser. Seller, at Purchaser's expense, shall reasonably cooperate with Purchaser concerning the transferring and/or reissuance of environmental permits (if any) that are applicable to the Property.

15.2. Environmental Obligations.

15.2.1. Except as provided in Section 15.2.3 hereof, Purchaser shall be responsible for the following obligations (referred to hereinafter as "Environmental Obligations"), and waives any claim against Seller's Indemnified Parties from and against the following claims:

15.2.1.1. (1) Any obligation to perform response actions required by law with respect to either (A) existing contamination on, at, under or from the Property as of the Closing Date or (B) any contamination on, at, under or from the Property caused by the release of Regulated Substances on, at, under or from the Property on or after the Closing Date; and (2) any claim by any governmental body or third party that a response action is required to respond to any such contamination on, at, under or from the Property;

15.2.1.2. Any claim by a third party for death or personal injury caused by an exposure to existing contamination on, at, under or from the Property, or an exposure to any contamination on, at or under the Property on or after the Closing Date;

15.2.1.3 Any claim by Purchaser, or Purchaser's operator, contractor, licensee or invitee for death or personal injury caused by the presence of existing contamination on, at, under or from the Property, or an exposure to any contamination on, at, under or from the Property on or after the Closing Date;

15.2.1.4 Any claim by a third party for damage to real or personal property caused by existing contamination on, at, under or from the Property, or by contamination on, at, under or from the Property on or after the Closing Date;

15.2.1.5. Any claim by Purchaser for damage to the Property or the Purchaser's personal property on, at or under the Property, and any claim by Purchaser's operator, contractor, licensee or invitee for damage to real or personal property, caused by the presence of existing contamination on, at, under or from the Property or by contamination on, at, under or from the Property on or after the Closing Date;

15.2.1.6. Any claim for natural resource damages arising either from existing contamination on, at, under or from the Property or from any contamination on, at, under or from the Property on or after the Closing Date;

15.2.1.7. Any claim by a governmental body or third party for enforcement actions under Environmental Laws for alleged violations of Environmental Laws occurring on or after the Closing

Date with respect to existing contamination on, at, under or from the Property or with respect to any contamination on, at, under or from the Property on or after the Closing Date, including any related fines or penalties for violations of Environmental Laws; or

15.2.1.8. Any obligations attributable to the period on or after the Closing Date relating to compliance of the Property or conditions on the Property with Environmental Laws (including without limitation permitting requirements) or with applicable laws and orders of any governmental body relating to public health or safety, the environment, natural resources, wildlife, historic sites, vegetation, public parks or forests or wetlands.

15.2.2. Preexisting Contamination Response Actions.

15.2.2.1 For purposes of this Section 15, "Preexisting Contamination Response Actions" shall mean response actions required by law with respect to contamination existing prior to the Closing Date ("preexisting contamination") including without limitation those sites listed in Exhibit H. The costs for all Preexisting Contamination Response Actions shall be borne as follows:

15.2.2.1.1 Purchaser shall bear the first \$1 million in costs associated with Preexisting Contamination Response Actions.

15.2.2.1.2 Purchaser shall continue to have the obligation to undertake such Preexisting Contamination Response Actions, but Seller and Purchaser shall each bear 50% of the cost of Preexisting Contamination Response Actions incurred after the first \$1 million, up to \$10 million (i.e., \$5 million maximum for each party for obligations undertaken pursuant to this subsection 15.2.2.1.1). Purchaser agrees to provide Seller with documentation sufficient to Seller as evidence that such costs were appropriately incurred in accordance with applicable regulatory requirements and were paid, as well as evidence that the first \$1 million as set forth in Section 15.2.2.1.1 was appropriately incurred in accordance with applicable regulatory requirements and was paid. The obligation for Seller to contribute 50% of the costs associated with Preexisting Contamination Response Actions shall terminate without notice ten (10) years after the Closing Date, and any costs for Preexisting Contamination Response Actions incurred after ten (10) years after the Closing Date shall be borne solely by Purchaser.

15.2.2.1.3 Purchaser shall bear the costs of all Preexisting Contamination Response Actions in excess of the \$11 million described in Sections 15.2.2.1.1 and 15.2.2.1.2, and shall bear the costs of all Preexisting Contamination Response Actions that are incurred after ten (10) years from the Closing Date.

15.2.3 Notwithstanding any of the foregoing, and except as allocated pursuant to the Joint Operations Agreement, which in the event of a liability allocated thereby shall govern, Purchaser shall not be responsible for any of the following, to the extent caused by the actions or omissions of Seller, Seller's contractors, licensees, invitees on or after the Closing Date:

15.2.3.1 (1) Any obligation to perform response actions required by law with respect to any contamination on, at, under or from the Property caused by post-Closing release of Regulated Substances ("post-Closing contamination") that is directly caused by Seller, Seller's contractors, licensees, or invitees; and (2) any claim by any governmental body or third party that a response action is required to respond to any such post-Closing contamination on, at, under or from the Property;

15.2.3.2 Any claim by a third party for death or personal injury caused by an exposure to any post-Closing contamination on, at, under or from the Property that is directly caused by Seller, Seller's contractors, licensees, or invitees;

15.2.3.3 Any claim by Purchaser, or Purchaser's operator, contractor, licensee or invitee, for post-Closing death or personal injury caused by the presence of an exposure to any post-Closing contamination on, at, under or from the Property that is directly caused by Seller, Seller's contractors, licensees, or invitees;

15.2.3.4 Any claim by a third party for damage to real or personal property caused by post-Closing contamination on, at, under or from the Property that is directly caused by Seller, Seller's contractors, licensees, or invitees.

15.2.3.5 Any claim for natural resource damages arising from any post-Closing contamination on, at, under or from the Property that is directly caused by Seller, Seller's contractors, licensees, or invitees;

15.2.3.6 Any claim by Purchaser for damage to the Property (excluding any claim for property value diminution) or Purchaser's personal property on, at or under the Property, and any claim by

Purchaser's operator, contractor, licensee or invitee for damage to real or personal property at the Property, caused by post-closing contamination on, at, under or from the Property that is directly caused by Seller, Seller's contractors, licensees, or invitees; and

15.2.3.7 Any claim by a governmental body or third party for enforcement actions under Environmental Laws for alleged violations by Seller of Environmental Laws occurring on or after the Closing Date with respect to any post-Closing contamination on, at, under or from the Property caused directly by Seller, Seller's contractors, licensees, or invitees, including any related fines or penalties for violations of Environmental Laws by Seller attributable to the period on or after the Closing Date.

15.3 Third Party Liabilities. The Parties reserve their rights against potentially responsible parties, past or current lessees, governmental reimbursement funds or other third parties, including, but not limited to Penn Central, including rights or indemnification, contribution, insurance, contract and tort, in connection with any liabilities, damages, penalties, fines, claims, demands, causes of action, liens, suits, costs (including without limitation environmental investigation and remediation costs), judgments, and expenses (including without limitation attorneys' and experts' fees and expenses) that may arise as a result of conditions on the Premises created or otherwise existing on the Premises. The Parties shall reasonably cooperate with one another in the exercise of their respective rights, including joint defense and prosecution arrangements.

15.4 Survival. This Section 15 shall survive the Closing of the transactions contemplated herein.

SECTION 16. BROKERAGE COMMISSION.

All negotiations relative to this Agreement and the purchase and sale of the Property have been conducted between Seller and Purchaser without the intervention of any person or other party as agent or broker. Seller and Purchaser each warrant and represent to the other that there are and will be no broker's commissions or fees payable in connection with this Agreement or the purchase and sale of the Property by reason of their respective dealings, negotiations or communications. Purchaser agrees to pay for all claims, demands, actions and judgments of any and all brokers, agents and other intermediaries alleging a commission, fee or other payment to be owing by reason of Purchaser's dealings, negotiations or communications in connection with this Agreement or the purchase and sale of the Property. Seller agrees to pay for all claims, demands, actions and judgments of any and all brokers, agents and other intermediaries alleging a commission, fee or other payment to be owing by reason of Seller's dealings, negotiations or communications in connection with this Agreement or the purchase and sale of the Property.

SECTION 17. NOTICES.

Wherever any notice or other communication is required or permitted hereunder, such notice or other communication shall be in writing and shall be delivered by overnight courier or by hand delivery, or sent by U.S. registered or certified mail, return receipt requested, postage prepaid, to the addresses set out below or at such other addresses as are specified by written notice delivered in accordance herewith:

SELLER:

NSR John Friedmann
Vice President - Strategic Planning
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510

With a copy to: Thomas W. Ambler
Senior General Attorney
Law Department
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510

PURCHASER:

Michigan: Director
Michigan Department of Transportation
State Transportation Building
425 W. Ottawa St.
P.O. Box 30050
Lansing, MI 48909

With a copy to: Assistant Attorney General in Charge of
Transportation Division
G. Mennen Williams Building, 7th Floor
525 W. Ottawa St.
P.O. Box 30212
Lansing, MI 48909

SECTION 18. MISCELLANEOUS.

18.1 Rules of Construction. This Agreement shall be construed and interpreted under the laws of the United States of America and the State of Michigan. The titles of sections and subsections herein have been inserted as a matter of convenience of reference only and shall not control or affect the

meaning or construction of any of the terms or provisions herein. All references herein to the singular shall include the plural, and vice versa.

18.2 Remedies Cumulative. Except as otherwise expressly provided herein, all rights, powers and privileges conferred hereunder upon the parties hereto shall be cumulative and in addition to all other rights, powers and remedies hereunder and those available at law or in equity. All such rights, powers and remedies may be exercised separately or at once, and no exercise of any right, power or remedy shall be construed to be an election of remedies or shall preclude the future exercise of any or all other rights, powers and remedies granted hereunder or available at law or in equity, except as expressly provided herein.

18.3 No Waiver. Neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

18.4 Entire Agreement. This Agreement (including all attachments, which are to be considered a part of the Agreement) contains the entire agreement of the parties hereto with respect to the purchase and sale of the Property and the subject matter hereof, and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein or incorporated herein by reference shall be of any force or effect. Any previous agreements or understandings among the parties regarding the subject matter hereof are merged into and superseded by this Agreement.

18.5 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective personal representatives, successors and assigns.

18.6 Amendments. No amendment to this Agreement shall be binding on any of the parties hereto unless such amendment is in writing and is executed by the party against whom enforcement of such amendment is sought.

18.7 Time of Essence. Time is of the essence of this Agreement.

18.8 Possession. Possession of the Property shall be granted at Closing.

18.9 Beneficiaries. Except as specifically provided herein, this Agreement is intended for the sole benefit of the parties hereto. Nothing in this Agreement is intended to or may be construed to give any person, firm, corporation, or other entity, other than the parties hereto, any rights pursuant to any provision or term hereof, and all provisions and terms of this Agreement are and shall be for the sole benefit and exclusive benefit of the parties to this Agreement.

18.10 Attorneys' and Consultants' Fees. In any action to enforce this Agreement, to collect damages as a result of a breach of its provisions, or to collect any indemnity provided for herein, Seller and Purchaser shall pay all their own costs in such action, including the costs of investigation, settlement, expert witnesses and reasonable attorneys' fees, together with all additional costs incurred in enforcing or collecting any judgment rendered.

18.11 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument.

18.12 No Severability. Because the transaction covered hereby is interconnected and all parts must be effective, if any material term, covenant or provision of this Contract, or the application thereof to any person or circumstance, shall ever be held to be illegal, invalid or unenforceable, then, in such event, the remainder of this Agreement or the application of such terms, covenants and provisions hereof shall no longer remain valid and enforceable

18.13 Extent of Waiver or Indemnification. As part of the consideration hereof, each Party agrees that each and all its waiver and indemnification contained herein in favor of the other Party shall extend to and constitute a waiver or indemnification, as applicable, to parent, subsidiaries of the Party and any parent and affiliates of such other Party, and all of their respective officers, directors, agents and employees.

18.14 Confirmation of Current Charge. Within twenty (20) days of the Execution Date, Purchaser shall have reviewed the amount of the Current Charge described in Section 4(c) of Exhibit C attached hereto. If within such 20-day period, Purchaser fails to notify Seller of its acceptance or non-acceptance, Purchaser shall be deemed to have accepted the Current Charge as described in Section 4(c) of Exhibit C attached hereto. If within such 20-day period, Purchaser rejects the amount of the Current Charge, then this Agreement shall automatically terminate and the Earnest Money shall be returned to Purchaser.

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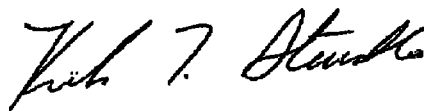
IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have executed this Agreement the day and year written above.

NORFOLK SOUTHERN RAILWAY
COMPANY

By: _____

Title: _____

STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION




By: _____

Title: Director,

Michigan Department of Transportation

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have executed this Agreement the day and year written above.

NORFOLK SOUTHERN RAILWAY
COMPANY

By:  _____
Title: Vice President

STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION

By: _____

Title: _____

EXHIBIT A

DESCRIPTION OF THE PROPERTY,

INCLUDING EXCLUSIONS, RESERVATIONS, AND COVENANTS

A-1. The Land. Those two certain lines of railroad described as follows:

A-1.1. That certain line of railroad extending from MP 7.60 at CP Town Line in Wayne County, Michigan, generally westwardly along the center line of the said line of railroad through Wayne, Washtenaw, Jackson and Calhoun Counties to the point of ending at MP 119.60 at CP Baron, in Calhoun County, Michigan, being approximately 112.00 miles in length, with varying widths, and on which heretofore Seller has maintained a line of railroad. The said line is depicted on Exhibit A-1, attached hereto; and

A-1.2. That certain line of railroad extending from MP 121.39 in Gord, Calhoun County, Michigan, generally westwardly along the center line of the said line of railroad through Calhoun and Kalamazoo Counties to the point of ending at MP 145.60 in Kalamazoo, Kalamazoo County, Michigan, being approximately 24.21 miles in length, with varying widths, and on which heretofore Seller has maintained a line of railroad. The said line is also depicted on Exhibit A-2.

A-2. Miscellaneous Rights. The "Miscellaneous Rights" means all rights, title and interest of Seller in and to any agreements (excluding Trackage Rights agreements), easements, drainage rights, licenses, privileges, adjacent streets, roads, alleys or rights of way, bridges, and all development rights, entitlements, licenses, permits, certificates of occupancy, consents and approvals whether governmental or otherwise, relating to the use, operation or maintenance of the Property, and all improvements thereon, except for Exhibit A-4 Exclusions, the Exhibit A-5 Reservations and the Exhibit A-6 Covenant.

A-3. Property. The Property includes the Land, the Miscellaneous Rights appertaining to the said Land, and also the Improvements-Conveyed appertaining to the said Land, but not the Exhibit A-4 Exclusions, the Exhibit A-5 Reservations or the Exhibit A-6 Covenant.

A-4. Exclusions from Property. Excluded from the Property is/are:

A-4.1. any such rail, other track material, ties, switches, turnouts, signal systems and other similar improvements that are not affixed to the property but which are contained in piles of such rail-related material;

A-4.2. any other such non-affixed personal property including without limitation locomotives, railroad cars or other rail vehicles;

A-4.3. those other parcels as generally depicted on the valuation maps attached hereto as Exhibit A-3; and

A-4.4. It is understood and agreed that Seller will reserve in the Quitclaim Deed described in Section 10.2.1 of the Agreement an easement over all of the Land for one hundred eighty (180) days following the Closing Date in which to remove such of the items described in Exclusion A-4.1 as Seller wishes to remove. It is agreed that after the one hundred eighty (180) day period, the said reserved easement will be extinguished, and that if any of the items described in Exclusion A-4.1 remain on the Land following the end of that said one hundred eighty (180) day period, the title to the same shall automatically vest in Purchaser without the requirement of any additional action.

A-4.5. The real property and personal property described in this Paragraph A-4 are the Exhibit A-4 Exclusions.

A-5. Reservations from Property

A-5.1. An exclusive, perpetual, irrevocable, assignable, divisible, licensable and transferable easement (the "Freight Easement") over, under, across and upon the Property for all freight railroad purposes, including without limitation the right to operate over the existing Improvements-Conveyed hereby transferred, as well as any future modifications thereto, and any other improvements made to the Property; provided, however, that:

A-5.1.1. any assignment, division, license, or transfer of the Freight Easement (a) to any other entity (the "Assignee") shall not result in more than one freight operator operating on any segment of the Property other than existing freight lessees and existing Trackage Rights tenants (which, for avoidance of doubt, prohibits the grant of any new Trackage Rights), and (b) to an Assignee other than a parent, subsidiary, or affiliate of Seller shall be subject to the consent of Purchaser, which consent shall not be unreasonably withheld or delayed.

A-5.1.2. the rights hereby reserved pursuant to the Freight Easement are for the purpose of Seller using the same for bridging its freight trains from one end of the rail segment described in Exhibit A-1 to the other end of the same rail segment, connecting with other freight railroads, serving existing and future freight industries located along, adjacent and near the Property (it being agreed that Seller shall have the right to have new turnouts installed in order to serve customers, which turnouts shall be designed cooperatively to mitigate the adverse impact of such turnouts on intercity passenger operations; and it also being agreed

that existing turnouts shall not be removed without the consent of Seller, which consent shall not be withheld or delayed unreasonably), having connections made to the Property to serve existing and future industries, and operating freight trains and other equipment over the Property, but not including such ancillary passenger facilities such as passenger stations and side tracks leading only to passenger stations;

A-5.1.3. as part of the Freight Easement rights hereby reserved, Seller shall also have the right to the sole use (except in an emergency) for freight purposes of the tracks described as being dedicated to freight service as set forth in the Joint Operations Agreement, as defined in the Agreement for Purchase and Sale by and between Norfolk Southern Railway Company and the Michigan Department of Transportation dated October 3, 2011 (the "Agreement"); and

A-5.1.4. operations within the Freight Easement shall be governed by the terms of the Joint Operations Agreement.

A-5.2. An exclusive, perpetual, irrevocable, assignable, divisible, licensable and transferable easement over, under, across and upon the Property for the purposes of constructing, accessing (ingress/egress), owning, repairing, renewing, replacing, installing, constructing, operating and maintaining new or existing communication, signal and fiber optic communications systems and appurtenant facilities and equipment and any other communication systems, including, without limitation, existing and new telecommunication and other towers ("Communication Facilities"); provided, however, that:

A-5.2.1. Seller or those claiming under Seller shall not unduly interfere with Purchaser's use of the Property for passenger transportation purposes;

A-5.2.2. if any Changes and/or Additions to the Property require relocation of Communication Facilities, Seller agrees that (a) as to existing Communication Facilities, Purchaser shall pay for any such relocations; provided, however, Seller agrees to exercise any rights Seller may have to seek payment from a third party for such relocation, but Seller does not warrant the outcome, and if the same is not paid by such third party, Purchaser shall be responsible for the relocation costs; and (b) as to any future agreement for Communication Facilities, Seller shall use commercially reasonable efforts to include in such agreement a provision that requires the grantee or licensee to relocate the Communication Facilities of such party at the expense of parties other than the Purchaser, provided that any such agreement shall require the grantee or

licensee to relocate its Communication Facilities at the expense of parties other than the Purchaser when such relocation is required to accommodate the operational needs of intercity passenger service; and

A-5.2.3. Purchaser shall have the rights to (a) use, at no additional cost to Purchaser in the operation of Purchaser's passenger operations any existing Communication Facilities belonging or otherwise under the control of Seller and used in conjunction with Seller's railroad operations on the Property, (b) pursue, by itself or through third party contractors or licensees, the development, construction, operation, maintenance, repair, renewal and replacement of separate Communication Facilities over, under, across and upon the Property as necessary or desirable for use in the operation of Purchaser's passenger operations on the Property or any other public purpose, (c) upon request to Seller whenever new Communication Facilities are being installed or existing Communication Facilities are being relocated upon the Property, arrange to have Purchaser's Communication Facilities co-located at Purchaser's expense, provided that the co-location of such Communication Facilities can be reasonably accommodated.

A-5.3. An exclusive, perpetual, irrevocable, assignable, divisible, licensable and transferable non-terminable billboard license(s) upon the Property for those billboards listed on Exhibit A-4 attached hereto as well as for new billboard sites for purposes of accessing (ingress/egress), owning, repairing, renewing, replacing, installing, constructing, operating and maintaining such billboards and/or signboards and appurtenant facilities and equipment (including utility connections to service such billboards and/or signboards but that shall not unduly interfere with Purchaser operations on the Property) (the "Billboard Facilities") of Seller or its grantees, lessees or licensees; provided, however, that:

A-5.3.1. if Purchaser requests the relocation of any Billboard Facilities, in order for the Purchaser to construct any Changes and/or Additions on the Property, Seller will (a) use commercially reasonable efforts, within the limitations imposed by any applicable agreements governing Billboard Facilities, to work with any parties with an interest in such existing Billboard Facilities to find an acceptable, suitable and equally advantageous replacement location on other portions of the Property and (b) exercise any rights under the applicable agreements to obtain payment for such relocation, provided that Seller shall not be required to take a legal position that Seller deems to be frivolous or unlikely to result in a payment for relocation costs;

A-5.3.2. Purchaser shall fully cooperate in such relocation efforts (including without limitation obtaining approval of any permits that may be required for such relocation) and, unless the cost is one which Seller successfully requires be borne by a third party, Purchaser will reimburse Seller or the applicable Billboard Facility entity, as the case may be, all costs of such relocation;

A-5.3.3. if despite such efforts a new acceptable, suitable and equally advantageous location for such billboards and/or signboards cannot be located, Purchaser will promptly pay Seller the sum Seller is required to pay to the applicable Billboard Facility entity pursuant to Seller's agreement with such entity for the permanent removal of any Billboard Facilities; and

A-5.3.4. the exercise of the rights reserved hereunder by Seller or those claiming under Seller are not to unduly interfere with Purchaser's use of the Property for passenger transportation purposes, it being agreed that the existing billboards and signboards do not interfere with Purchaser's use of the Property for passenger transportation purposes.

A-5.4. An exclusive, perpetual, irrevocable, assignable, divisible, licensable and transferable reservation of all timber rights and also all mineral rights whether gaseous, liquid or solid including without limitation oil, gas, natural gas and coal in, over, across, upon and under the Property as well as an exclusive, perpetual, irrevocable, assignable, divisible, licensable and transferable easement over, under, across and upon the Property for the purposes of constructing, accessing (ingress/egress), owning, repairing, renewing, replacing, installing, constructing, operating and maintaining such mineral rights as well as new or existing facilities used for the purpose of removing such oil, gas and mineral rights in said Property. The exercise of the rights reserved hereunder by Seller or those claiming under Seller is not to unduly interfere with Purchaser's use of the Property for passenger transportation purposes.

A-5.5. An exclusive, perpetual, irrevocable, assignable, divisible, licensable and transferable easement over, under, across and upon the Property for the purposes of constructing, accessing (ingress/egress), owning, repairing, renewing, replacing, installing, constructing, operating and maintaining new or existing any utility lines (including without limitation those for water, sewer, electrical, gas or telecommunication lines, which are parallel to the main tracks on the Property, as well as appurtenant facilities and equipment ("Utility Facilities"); provided, however, that:

A-5.5.1. Seller or those claiming under Seller shall not unduly interfere with Purchaser's use of the Property for passenger transportation purposes;

A-5.5.2. if any Changes and/or Additions to the Property require relocation of Utility Facilities, Seller agrees that (a) as to existing Utility Facilities, Purchaser shall pay for any such relocations; provided, however, Seller agrees to exercise any rights Seller may have to seek payment from a third party for such relocation, but Seller does not warrant the outcome, and if the same is not paid for by such third party, Purchaser shall be responsible for the relocation costs; and (b) as to any future agreement for Utility Facilities, Seller shall use commercially reasonable efforts to include in such agreement a provision that requires the grantee or licensee to relocate the Utility Facilities of such party at the expense of parties other than the Purchaser, provided that any such agreement shall require the grantee or licensee to relocate its Utility Facilities at the expense of parties other than the Purchaser when such relocation is required to accommodate the operational needs of intercity passenger service; and

A-5.5.3. Purchaser shall have the rights to (a) use, at no additional cost to Purchaser for the operation of Purchaser's passenger operations, any existing Utility Facilities belonging or otherwise under the control of Seller and used in conjunction with Seller's operations on the Property, (b) pursue, by itself or through third party contractors or licensees, the development, construction, operation, maintenance, repair, renewal and replacement of separate Utility Facilities over, under, across and upon the Property as necessary or desirable for use in the operation of Purchaser's passenger operations on the Property or any other public purpose, and (c) upon request to Seller whenever new Utility Facilities are being installed or existing Utility Facilities are being relocated upon the Property, arrange to have Purchaser's Utility Facilities co-located at Purchaser's expense, provided that the co-location of such Utility Facilities can be reasonably accommodated.

A-6 Covenant about the Property.

Notwithstanding any other provision of this Agreement, Purchaser agrees that the Quitclaim Deed executed as part of this transaction shall include as a permanent covenant of Purchaser running with and touching the land that Purchaser (or any operator, contractor, agent or licensee, and all permitted successors and assigns, except Seller and its successors and assigns) shall not use any of the Property for any freight rail purposes.

EXHIBIT A-1

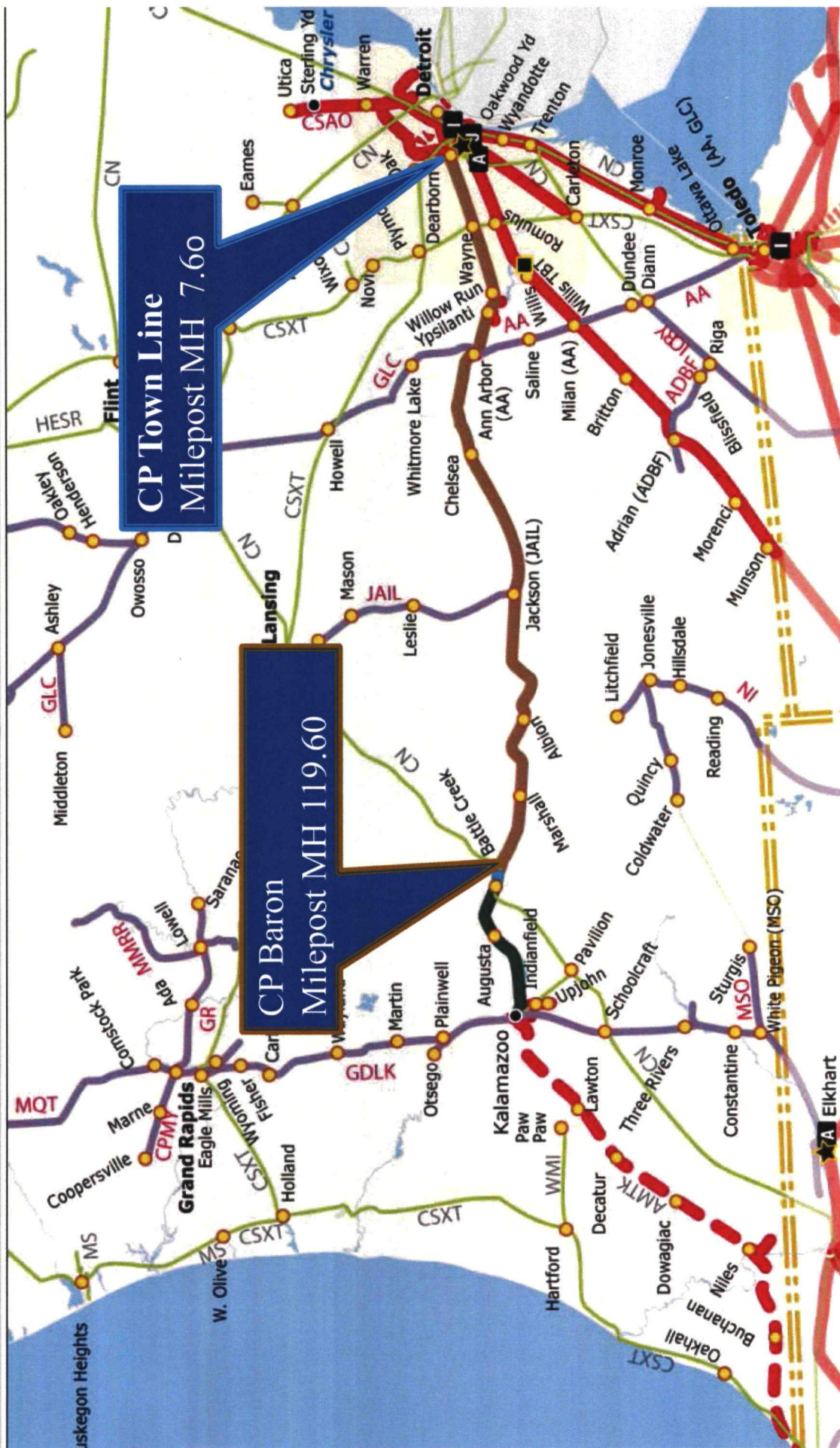


EXHIBIT A-2

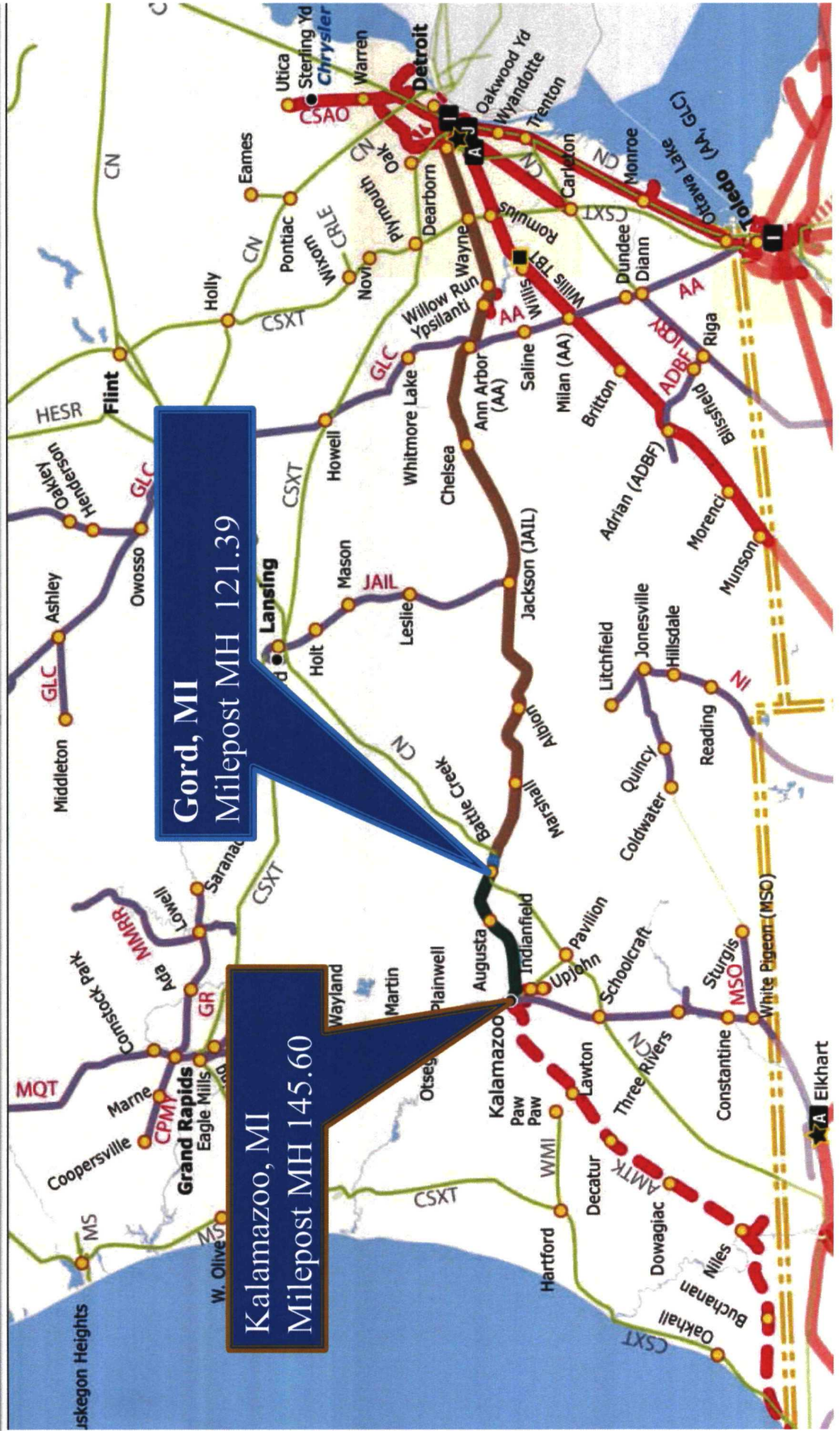
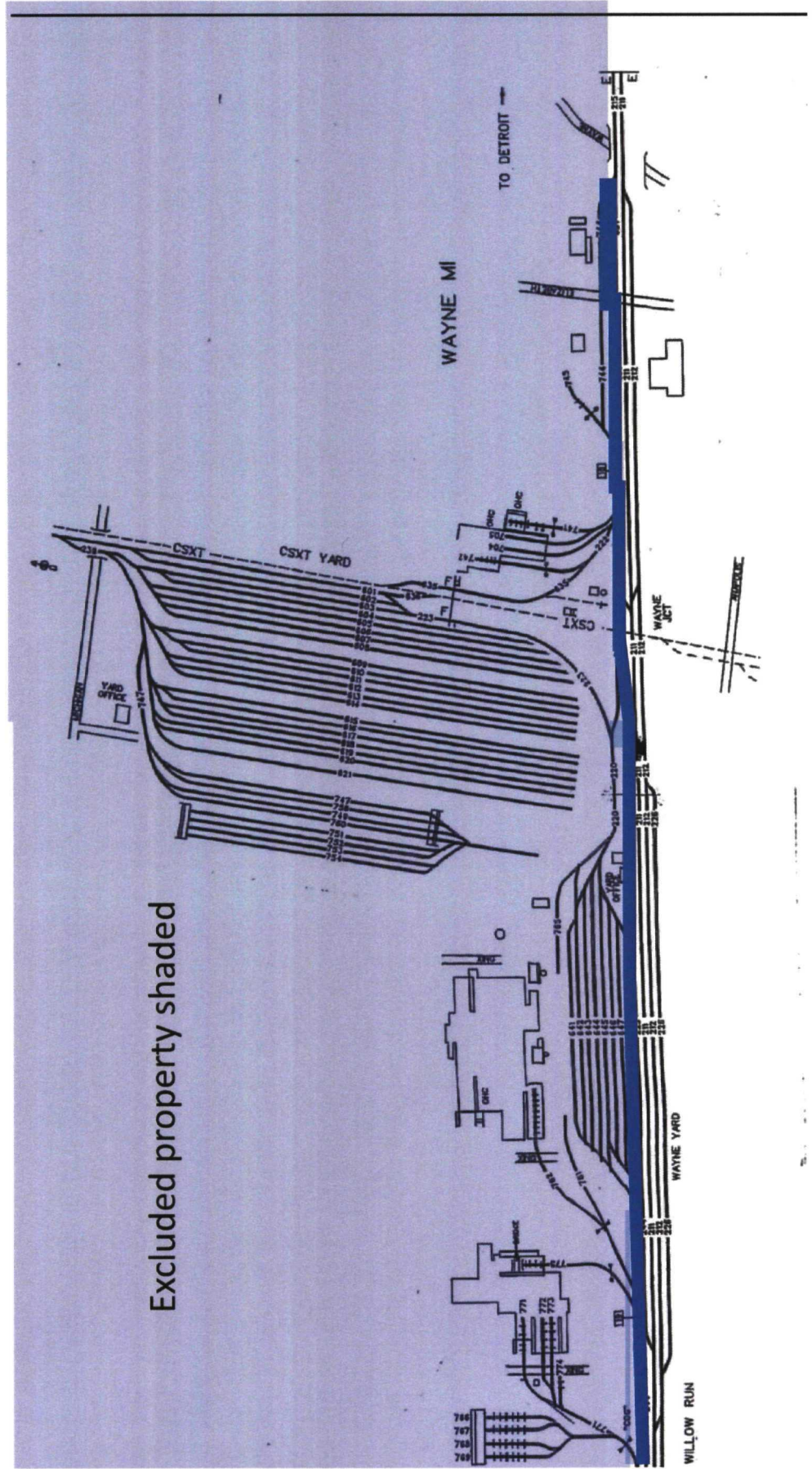


EXHIBIT A-3

Excluded property shaded



Excluded property shaded

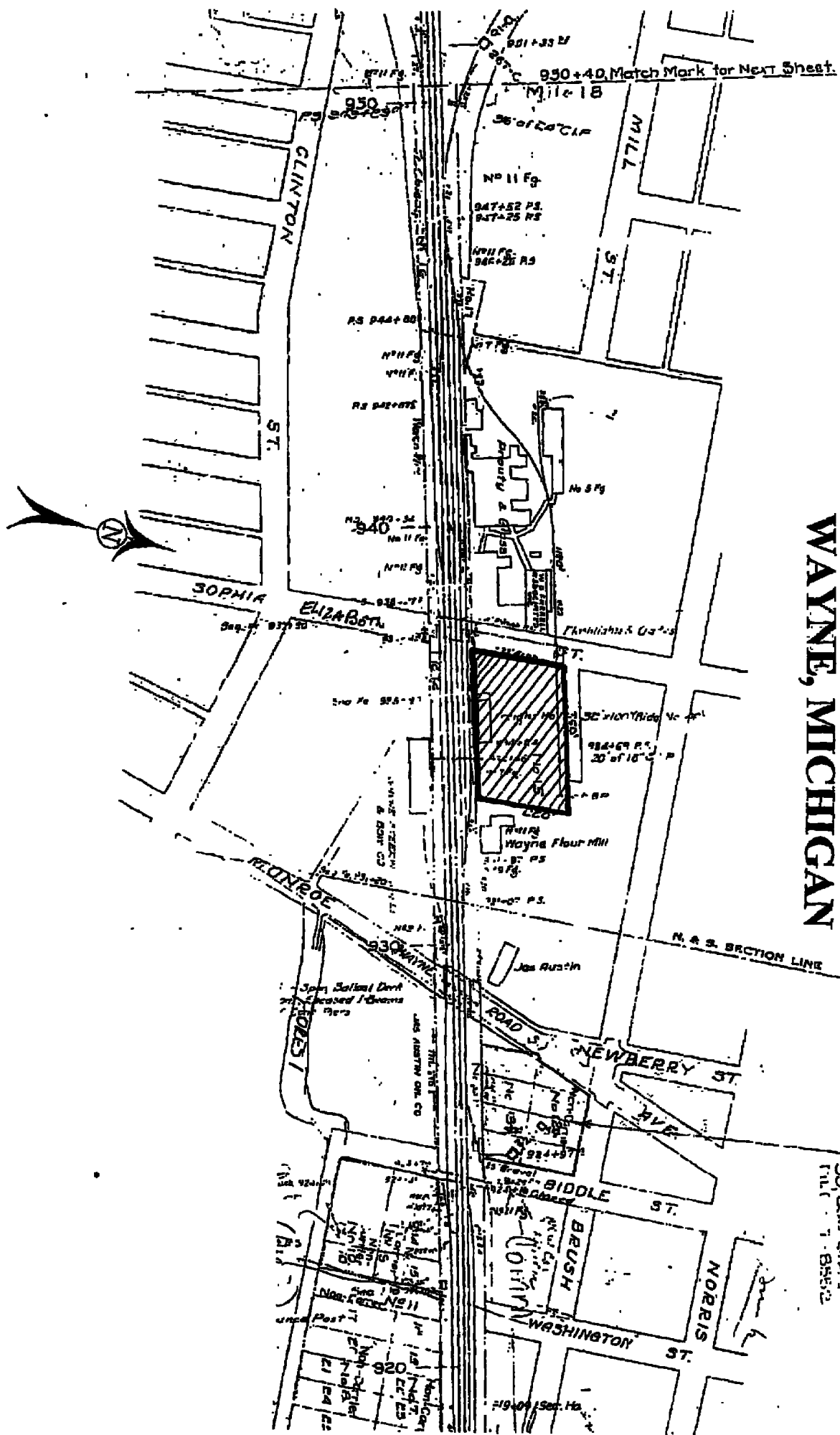


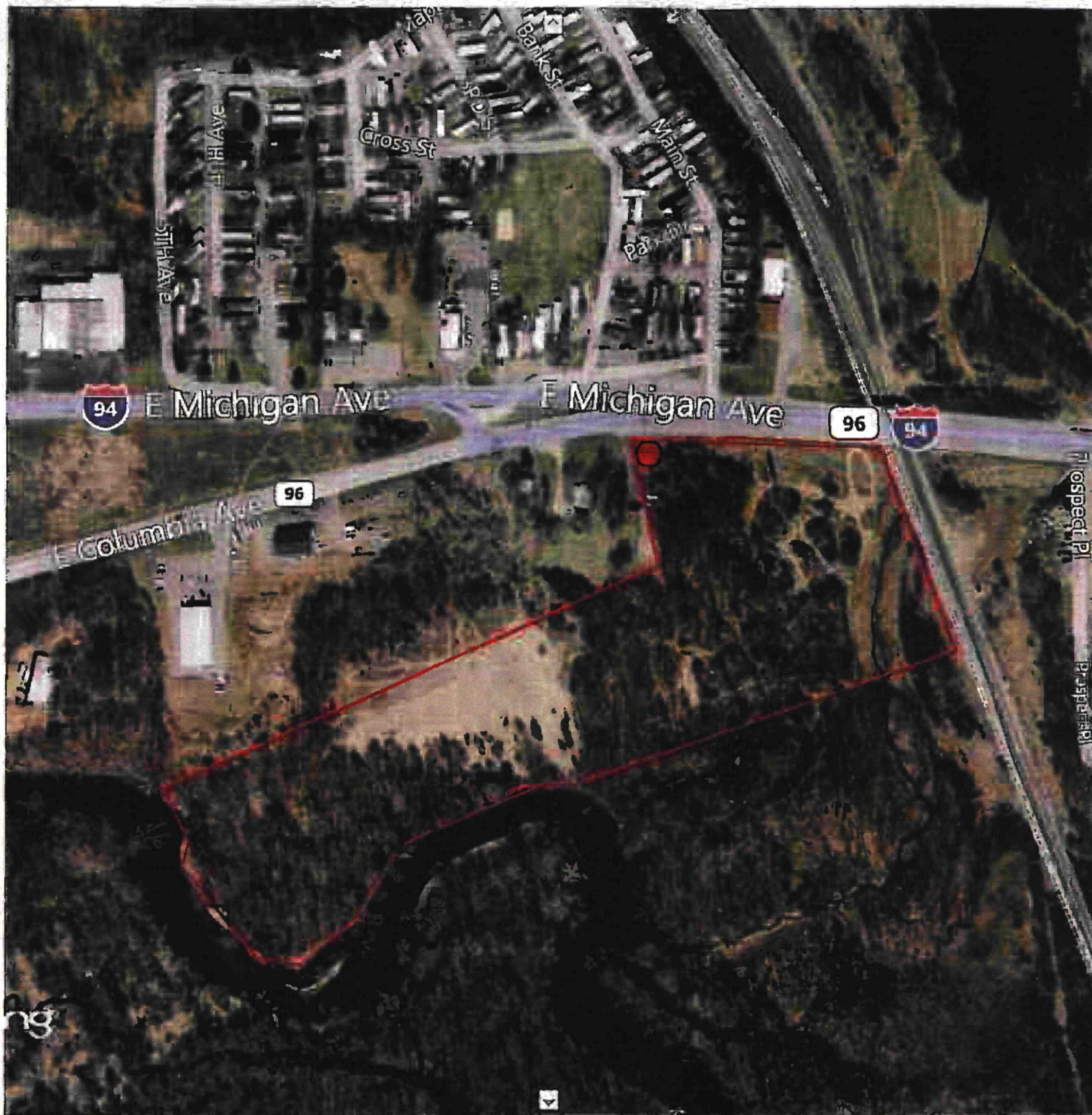
NORFOLK SOUTHERN RAILWAY COMPANY
Real Estate Department

Branch:	Michigan Line Buildings have been removed	
Location:	Wayne, MI	
Donee:		
Area:	2.0 AC +/-	
Maps:	VS 1B / 4 / Pd15	Milepost: MH 17.7
Activity No:		Exhibit A
Date:	9-21-2011	Not To Scale



WAYNE, MICHIGAN





**NORFOLK SOUTHERN RAILWAY COMPANY
Real Estate Department**

Branch:	Michigan Line		
Location:	Battle Creek, MI		
Donee:			
Area:	23ac+/-		
Maps:	VS1b/54/Pcl#13	Milepost:	117.6
Activity No:		Exhibit A	
Date:	9-21-2011	Not To Scale	



Michigan Line

MP MH 117.6

VS 1B /Map 54,
PCL# 13

11971#
0811

EXHIBIT A-4

<u>City</u>	<u>MP</u>	<u>Permit Numbers</u>	<u>Description</u>
Ann Arbor	37.62	8-4582 and 8-4583.	1PP at 938 N. Main St.
Battle Creek	117.79	71335	1 PB Loc s/s East Michigan Ave. at Columbus Ave.
Jackson	73	NF #83940 SF- 83941	2 PB Loc w/o Hwy. 127, s/o Page Ave. facing n/s
Jackson	75.65	8-1743	1PP Copper St. NR RR Shanty
Jackson	75.8	8-0938 and 8-1286	2PP Corner N. Merchank St. @ Clinton
Jackson	76.98	No permit needed	2PP e/o Wisner St. s/o West Ganson St.
Kalamazoo	142.41	No permit needed	2PP e/o Mills St.
Kalamazoo	142.5	72869	1PP w/o East Michigan Ave
Kalamazoo	142.6	72867 & 72868	2PP at Michigan Ave
Kalamazoo	143.19	No permit needed	1PP facing Pitcher Street

EXHIBIT B

OWNER'S AFFIDAVIT

STATE OF GEORGIA

COUNTY OF FULTON

Personally came before me, the undersigned attesting officer, Linda V. Hill, who after first being duly sworn, did depose and aver the following:

Affiant is General Attorney - Real Estate of Norfolk Southern Railway Company, ("Owner"), the owner of land shown on Attachment "A", which is attached hereto and made a part hereof (property), which is being sold to the State of Michigan Department of Transportation ("Buyer").

Affiant avers that to her actual knowledge, Owner is in open, notorious, continuous, adverse and peaceable possession of said property and knows of no one claiming any adverse interest in said property, except as set out below.

Affiant further avers that to her actual knowledge there are no suits, judgments, bankruptcies or executions pending against Owner in any court whatever that could in any way affect the title to said property, or constitute a lien thereon, and that Owner is not surety on any bond that through default of the principal therein a lien would be created superior to any conveyance executed by Owner, nor are there any loan deeds, trust deeds, mortgages or liens of any nature whatsoever unsatisfied against said property, except as set out below and others of record.

Affiant further avers that to her actual knowledge there are no unpaid bills of any nature, either for services of any architect, engineer, or surveyor, or for labor or materials, for any recent improvements that may have been placed on said property, either in the construction or repair of any of the improvements thereon.

Affiant further avers that to her actual knowledge there are no liens for past due taxes, paving, sidewalk, curbing, sewer or any other street improvements of any kind against said property.

Affiant further avers that neither she nor Owner are foreign persons as defined by Internal Revenue Code Section No. 1445 (PL 98-369, Sec. 129 at 98 Stat 655) dated July 18, 1984.

Affiant further avers that this Affidavit is made for the benefit of Buyer.

Further the Affiant sayeth not.

Sworn to and subscribed before
me, this _____ day of
_____, 2011.

NORFOLK SOUTHERN RAILWAY COMPANY
By

Notary Public

General Attorney - Real Estate

My commission expires _____

EXHIBIT C

Michigan Line Joint Operations Agreement – Summary of Major Points

1. MDOT will own the line, including the exclusive passenger rights (the “Passenger Rights”). NSR, however, has reserved the exclusive, irrevocable and perpetual easement for all freight railroad purposes (the “Freight Easement”) over the line. The Michigan Line Joint Operations Agreement (the “Joint Operations Agreement”) will set forth how the line will be operated.
 - a. Both the Freight Easement and the Passenger Rights are connective with:
 - i. Conrail Shared Assets at Town Line (M.P. 7.6);
 - ii. NSR trackage rights (in the case of the Freight Easement) and Amtrak operating rights (in the case of the Passenger Rights) at the end points of the Battle Creek Section (M.P. 119.6 and M.P. 121.39 in and near Battle Creek), which is owned and operated by Canadian National and/or its subsidiaries (“CN”);
 - iii. Amtrak at Kalamazoo (M.P. 145.6);
 - iv. Any existing freight customer or freight railroad connecting to the line (in the case of the Freight Easement).
 - b. The subject trackage will be managed in accordance with the Joint Operations Agreement.
 - i. Passenger Exclusive Property will be such ancillary passenger-only trackage and facilities such as passenger stations and side tracks leading only to passenger stations.
 - ii. Freight Exclusive Property will be such ancillary freight-only facilities such as yards (i.e., Botsford Yard), yard offices and side tracks leading to freight-only customer facilities and ancillary freight-only facilities, to be maintained either by an NSR contractor or by an MDOT contractor, at NSR expense.
 - iii. Main line trackage west of Ypsilanti will be used for both passenger and freight service.
 1. The line west of Ypsilanti will be dispatched in accordance with sound dispatching principles. The dispatcher shall give due regard to the needs of freight and passenger carriers and their customers.
 2. Both the general volumes and approximate times for existing freight service on the main line trackage west of Ypsilanti will be protected, but both can be adjusted through negotiation. It is anticipated that the addition of a few freight trains would not have a material adverse effect on current or projected levels of intercity passenger service.

EXHIBIT C

3. Should NSR desire to materially modify its operations west of Ypsilanti, the parties will work together to determine what capital improvements might be required in order to effectuate the change without materially interfering with then-current or then-foreseeable intercity passenger rail service, with the costs thereof (including the costs of any required positive train control system ("PTC") modifications) borne by NSR.
- iv. MDOT will cause the single line track between MP 9.3 and MP 17.2 to be double tracked at a cost to persons other than NSR. Main line trackage east of Ypsilanti will therefore become a completely double tracked main line.
1. The trackage east of Ypsilanti will be dispatched in accordance with sound dispatching principles.
 2. The southern-most track of the double track area shall be exclusively used by passenger service, except in cases of emergency or during maintenance of the northern-most track, as reasonably determined by the dispatcher.
 3. The northern-most track of the double track area shall be engineered and operated so as to be devoted to the movement of freight, except in cases of emergency, during maintenance of the southern-most track or for passenger-passenger meets, as reasonably determined by the dispatcher. Notwithstanding the foregoing, the parties acknowledge that:
 - a. Intercity passenger-passenger meets shall not occur on a two-mile segment of track adjacent to Wayne Yard (to be designated by mile posts in the Joint Operating Agreement).
 - b. Intercity passenger-passenger meets shall primarily occur on a segment of track adjacent to the Dearborn Station, on a segment of track adjacent to Willow Run (both to be designated by mile posts in the Joint Operating Agreement) or west of Ypsilanti.
 4. Should growth of NSR freight traffic east of Ypsilanti consume the capacity of the northern-most line, the parties will work together to determine what capital improvements might be required in order to increase capacity on the double track main line to accommodate such freight growth without materially interfering with then-current or then-foreseeable intercity passenger rail service usage on the northern-most line, with the costs thereof (including the costs of any required PTC system modifications) borne by NSR.
- v. MDOT shall arrange for the installation, maintenance and renewal over the entire line of PTC that complies with applicable law, including the requirement that it be fully interoperable with the PTC system adopted over the national

EXHIBIT C

freight system. MDOT shall be responsible for all costs associated with the installation, maintenance and renewal of the PTC system. In no event shall NSR have any obligation for any of such costs, except that NSR shall be obligated to equip its locomotives in accordance with the requirements of the PTC system.

- c. MDOT will make modifications to the line to permit intercity passenger train speeds up to 110 mph (herein, the "HSR project"). Modifications to the line for intercity passenger service after completion of the HSR project may have an effect on the provision of service to freight customers and modification of freight service may have an effect on the provision of service to intercity passengers.
 - i. The intent of both parties is to enable future modifications to support passenger service or to support freight service, without materially interfering with either service.
 - ii. Accordingly, modifications required by either freight or intercity passenger service shall be engineered and constructed in a manner so as to not materially interfere with the performance of the other service.
 - iii. NSR shall secure MDOT approval for any modifications to the line for freight service, which approval shall not be unreasonably withheld, conditioned or delayed.
 - iv. MDOT shall use its commercial best efforts to secure NSR approval for any modifications to the line for intercity passenger service, which approval shall not be unreasonably withheld, conditioned or delayed; provided that if MDOT does not secure NSR's approval, it shall have the right to proceed with the modifications subject to i and ii, above.
 - v. The Joint Operations Agreement will provide for definitive deadlines for plan review and construction, with built in protections to ensure that such construction will be performed at an industry standard cost for the speed of track being constructed.
2. NSR will continue to provide dispatching until the project, including the double track east of Wayne, is completed. NSR and MDOT will negotiate in good faith regarding the phased transfer of dispatching responsibilities to MDOT's contractor. If NSR is the dispatcher, speeds on the dispatched segment shall be restricted to 79 mph.
3. Liability for operating claims shall be allocated between the intercity passenger operator and the freight operator and shall be handled as follows:
 - a. During the interim period prior to the completion of the entire HSR project, and during the period where NSR is providing dispatching services, as between Amtrak and Norfolk Southern, liability will continue to be governed by the Amtrak Off Corridor Agreement.

EXHIBIT C

- b. After completion of the project and the transfer of dispatching responsibilities, as between Amtrak and Norfolk Southern, liability allocations will mirror those set forth in the "Amended and Restated Northeast Corridor Freight Operating Agreement" dated February 1, 2006, between Amtrak and NSR concerning operations by NSR over the Amtrak Northeast Corridor.
 - c. The parties acknowledge the need for privity of contract between the passenger entity and the freight entity, so MDOT agrees that no passenger operator (including one providing Commuter Rail Service, as defined below) shall be permitted to operate on the subject trackage without entering into an agreement that mirrors the liability allocation in the agreements defined immediately above, and such entities have insurance in such amounts (\$500 million in the case of a passenger operator other than Amtrak) to cover any resulting liabilities.
4. Generally applicable to all scenarios:
- a. The rights of Grand Elk Railroad in and around Botsford Yard, and Jackson & Lansing Railroad Company in and around Jackson Yard, and CN in and about Battle Creek have been identified.
 - i. These operations and rights shall be included within the Freight Easement reserved to NSR.
 - ii. Agreements concerning these rights will not be assigned to MDOT.
 - iii. NSR shall not have the power to grant any additional trackage rights, either to any of these carriers or to others.
 - iv. As between NSR and MDOT, these operations shall be operations of NSR.
 - b. MDOT may permit the addition of regional, intracity or commuter passenger rail service ("Commuter Rail Service") on the line after completion of the entire HSR project, but only after the construction of additional capacity to handle the same.
 - c. NSR shall compensate MDOT for the use of the subject trackage by paying to MDOT a sum computed by multiplying (i) the Current Charge (initially set at \$0.445 per car mile) by (ii) the number of cars (loaded or empty) moved over the subject trackage other than solely over the Freight Exclusive Property by (iii) the miles of the subject trackage other than the Freight Exclusive Property over which the cars are moved. The Current Charge shall be indexed to reflect any increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of chargeout Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes", East District, issued by the Association of American Railroads ("AAR").
 - d. It is in our mutual best interests for MDOT, NSR, FRA and Amtrak to bring our operating and engineering staffs together to work through the complex operating issues involved in effectuating this project.

EXHIBIT C

- e. Nothing in the Joint Operations Agreement will derogate any of Amtrak's or any other parties' rights under 49 U.S.C. § 24308.

EXHIBIT D

Gentlemen:

Norfolk Southern Railway Company is conveying to the State of Michigan Department Of Transportation property described on the attached Exhibit "A." The closing is scheduled for _____.

_____ Title Insurance Corporation has advised Norfolk Southern Railway Company that its search of the records in anticipation of said sale to the State of Michigan Department of Transportation has disclosed the following:

- 1.
- 2.
- 3.

As an inducement for the purchase of the property, notwithstanding the existence of such encumbrances, Norfolk Southern Railway Company hereby agrees to indemnify the State of Michigan Department of Transportation against any loss which may be incurred by the State of Michigan Department of Transportation by reason of any of the aforesaid Financing Statements or any claim arising therefrom.

This letter of indemnity shall include any loss payments made by the State of Michigan Department of Transportation by reason of such Financing Statements or any attempt to enforce the same as well as any reasonable expenses incurred by the State of Michigan Department of Transportation in connection therewith.

You may make payment of any such claim if at any time in your discretion you deem it necessary for the State of Michigan Department of Transportation protection, after thirty (30) days' written notice to the undersigned of such proposed payment marked to the address shown below, and Norfolk Southern Railway Company hereby agrees to reimburse you for any such payment within 30 days after receipt of such notice.

When said Financing Statements are satisfied of record, this letter of indemnity shall be satisfied and canceled.

NORFOLK SOUTHERN RAILWAY COMPANY

By:

Title:

Image # 833218v1

Exhibit E1

WHEREAS, Michigan Department of Transportation ("Principal") has requested that Norfolk Southern Railway Company ("Company") permit Principal to be on or about Company's premises and/or facilities at or in the vicinity of _____ (the "Premises") for the sole purpose of going upon the Premises to inspect, examine, survey, study and make surveys which Principal may deem necessary on the Premises during the period _____, 20____, to _____, 20____ (the "Right of Entry").

WHEREAS, Company is willing to grant the Right of Entry subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows.

Company hereby grants Principal the Right of Entry. The Right of Entry shall extend solely to Principal employees (collectively "Licensees"). This Right of Entry shall not apply to subcontractors, agents or any other entities affiliated with Principal or to any employees thereof, each of which will be permitted access to the Premises only after entering into the right of entry in the form attached hereto as Exhibit A. The Right of Entry shall apply to those portions of the Premises, and to such equipment, machinery other personal property and fixtures belonging to Company or otherwise located on the Premises, only to the extent specifically designated and approved in writing by authorized representatives of Company (collectively, "Designated Property"). This Right of Entry in no way applies to Company's rolling stock, and access to such rolling stock under this Right of Entry is expressly forbidden. Further, this Right of Entry expressly does not include test borings, soil bearing tests or other engineering, environmental or landscaping tests that require any intrusive sampling activities.

Principal agrees:

- (i) that Licensees' access to the Premises shall be limited to the Designated Property and that Principal shall be liable and fully responsible for all actions of Licensees while on the Premises pursuant to the Right of Entry;
- (ii) that Licensees shall (a) be subject to Company's direction when upon the Premises, and (b) be subject to Company's removal from the Premises, in Company's sole discretion, due to negligence, misconduct, unsafe actions, breach of this agreement or the failure to act respectfully, responsibly, professionally, and/or in a manner consistent with Company's desire to minimize risk and maintain its property with maximum security and minimum distractions or disruptions or for any other lawful reason;
- (iii) that if Principal is a contractor that has been retained to provide services to Company, that Principal shall and shall cause all of the Licensees to conduct their activities in accordance with the Norfolk Southern Operating Guidelines for

Contractors, and that it shall be Principal's obligation to request and obtain a copy of such guidelines from Company;

- (iv) to give Company's officer signing this agreement, or his or her authorized representative, advance notification of the presence of Licensees on Designated Property;
- (v) with regard to its own employees, to save harmless Company, its officers, agents and employees from and against any and all claims, demands, losses, suits, judgments, costs, expenses (including without limitation reasonable attorney's fees) and liability resulting from (a) injury to or death of any person, including without limitation the Licensees, and damage to or loss of any Licensee Property, arising or in any manner growing out of the presence of either the Licensees or the Licensee Property, or both, on or about the Premises, regardless of whether negligence on the part of Company, its officers, agents or employees caused or contributed to said loss of life, personal injury or property loss or damage in whole or in part; (b) any alleged violation of any law, statute, code, ordinance or regulation of the United States or of any state, county or municipal government (including, without limitation, those relating to air, water, noise, solid waste and other forms of environmental protection, contamination or pollution or to discrimination on any basis) that results in whole or in part, directly or indirectly, from the activities of Licensees related in any way to their presence on the Premises or from any other act or omission of Licensees contributing to such violation, regardless of whether such activities, acts or omissions are intentional or negligent, and regardless of any specification by Company without actual knowledge that it might violate any such law, statute, code, ordinance or regulation; (c) any allegation that Company is an employer or joint employer of a Licensee or is liable for related employment benefits or tax withholdings; or (d) any decision by Company to bar or exclude a Licensee from the Premises pursuant to subsection (ii)(b) above;
- (vi) to reimburse Company for any material, labor, supervisory and protective costs (including flagging) and related taxes and overhead expenses required or deemed necessary by Company because of the presence of either Licensees or Licensee Property on the Premises;
- (vii) to exercise special care and precautions to protect the Premises and equipment, machinery, rolling stock and other personal property and fixtures belonging to Company or otherwise located on the Premises (whether or not constituting Designated Property) and to avoid interference with Company's operations;
- (viii) to not create and not allow drainage conditions which would be adverse to the Premises or any surrounding areas;
- (ix) to maintain a minimum clearance of fifteen feet (15') from the center line of the nearest track for any of the Licensee Property unless otherwise authorized in writing by Company;

- (x) to refrain from the disposal or release of any trash, waste, and hazardous, dangerous or toxic waste, materials or substances on or adjacent to the Premises and to clean up or to pay Company for the cleanup of any such released trash, waste, materials or substances; and
- (xi) to restore the Premises and surrounding areas to its original condition or to a condition satisfactory to the Company officer signing this agreement or to his or her authorized representative (ordinary wear and tear to rolling stock and equipment excepted) upon termination of Licensees' presence on the Premises.

As a part of the consideration hereof, Principal further hereby agrees that Company shall mean not only Norfolk Southern Railway Company but also Norfolk Southern Corporation and any and all subsidiaries and affiliates of Norfolk Southern Railway Company or Norfolk Southern Corporation, and that all of Principal's indemnity commitments in this agreement in favor of Company also shall extend to and indemnify Norfolk Southern Corporation and any subsidiaries and affiliated companies of Norfolk Southern Railway Company or Norfolk Southern Corporation and its and/or their directors, officers, agents and employees.

This agreement shall be governed by the internal laws of the State of Michigan, without regard to otherwise applicable principles of conflicts of laws. If any of the foregoing provisions is held for any reason to be unlawful or unenforceable, the parties intend that only the specific words found to be unlawful or unenforceable be severed and deleted from this agreement and that the balance of this agreement remain a binding enforceable agreement to the fullest extent permitted by law.

This agreement may be amended only in a writing signed by authorized representatives of the parties.

MICHIGAN DEPARTMENT OF
TRANSPORTATION

Name of Principal

NORFOLK SOUTHERN RAILWAY COMPANY

By: _____

Print or type name, & Signature:

Title _____

Date _____ 20 _____

By _____

Print or type name:

Title Division Transportation Supt.

Date _____, 20 _____

Exhibit E-2

WHEREAS, _____ ("Principal") has requested that Norfolk Southern Railway Company ("Company") permit Principal to be on or about Company's premises and/or facilities at or in the vicinity of _____ (the "Premises") for the sole purpose of going upon the Premises to inspect, examine, survey, study and make surveys which Principal may deem necessary on the Premises during the period _____, 20____, to _____, 20____ (the "Right of Entry").

_____ during the period _____, 20____, to _____, 20____ (the "Right of Entry").

WHEREAS, Company is willing to grant the Right of Entry subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows.

Company hereby grants Principal the Right of Entry. The Right of Entry shall extend solely to Principal employees (collectively "Licensees"). This Right of Entry shall not apply to subcontractors, agents or any other entities affiliated with Principal or to any employees thereof, each of which will be permitted access to the Premises only after entering into the right of entry in the form attached hereto as Exhibit A. The Right of Entry shall apply to those portions of the Premises, and to such equipment, machinery other personal property and fixtures belonging to Company or otherwise located on the Premises, only to the extent specifically designated and approved in writing by authorized representatives of Company (collectively, "Designated Property"). This Right of Entry in no way applies to Company's rolling stock, and access to such rolling stock under this Right of Entry is expressly forbidden. Further, this Right of Entry expressly does not include test borings, soil bearing tests or other engineering, environmental or landscaping tests that require any intrusive sampling activities.

Principal agrees:

- (i) that Licensees' access to the Premises shall be limited to the Designated Property and that Principal shall be liable and fully responsible for all actions of Licensees while on the Premises pursuant to the Right of Entry;
- (ii) that Licensees shall (a) be subject to Company's direction when upon the Premises, and (b) be subject to Company's removal from the Premises, in Company's sole discretion, due to negligence, misconduct, unsafe actions, breach of this agreement or the failure to act respectfully, responsibly, professionally, and/or in a manner consistent with Company's desire to minimize

risk and maintain its property with maximum security and minimum distractions or disruptions or for any other lawful reason;

- (iii) that if Principal is a contractor that has been retained to provide services to Company, that Principal shall and shall cause all of the Licensees to conduct their activities in accordance with the Norfolk Southern Operating Guidelines for Contractors, and that it shall be Principal's obligation to request and obtain a copy of such guidelines from Company;
- (iv) to give Company's officer signing this agreement, or his or her authorized representative, advance notification of the presence of Licensees on Designated Property;
- (v) to indemnify and save harmless Company, its officers, agents and employees from and against any and all claims, demands, losses, suits, judgments, costs, expenses (including without limitation reasonable attorney's fees) and liability resulting from (a) injury to or death of any person, including without limitation the Licensees, and damage to or loss of any property, including without limitation that belonging to or in the custody of Licensees (the "Licensee Property"), arising or in any manner growing out of the presence of either the Licensees or the Licensee Property, or both, on or about the Premises, regardless of whether negligence on the part of Company, its officers, agents or employees caused or contributed to said loss of life, personal injury or property loss or damage in whole or in part; (b) any alleged violation of any law, statute, code, ordinance or regulation of the United States or of any state, county or municipal government (including, without limitation, those relating to air, water, noise, solid waste and other forms of environmental protection, contamination or pollution or to discrimination on any basis) that results in whole or in part, directly or indirectly, from the activities of Licensees related in any way to their presence on the Premises or from any other act or omission of Licensees contributing to such violation, regardless of whether such activities, acts or omissions are intentional or negligent, and regardless of any specification by Company without actual knowledge that it might violate any such law, statute, code, ordinance or regulation; (c) any allegation that Company is an employer or joint employer of a Licensee or is liable for related employment benefits or tax withholdings; or (d) any decision by Company to bar or exclude a Licensee from the Premises pursuant to subsection (ii)(b) above;
- (vi) to have and keep in effect the following kinds of insurance, with insurance companies satisfactory to Company, during the entire time Licensees or Licensee Property, or both, is on the Premises:
 - 1. Workers' Compensation and Employers' Liability Insurance – coverage to meet fully the Statutory or regulatory requirements applicable in connection with death, disability or injury to Principal's employees;

2. General Liability Insurance having a combined single limit of not less than \$2,000,000 per occurrence. The policy shall include Products and Completed Operations coverage and contractual liability coverage to cover the obligations assumed under this agreement and shall not deny coverage for operations conducted within 50 feet of any Railroad hazard. Company shall be named as an additional insured;
3. In the event Principal cannot obtain contractual liability insurance to cover the obligation assumed in this agreement, Principal shall furnish Company with a Railroad Protective Liability Policy having a combined single limit of \$2,000,000 per occurrence;
4. Automobile Liability insurance having a combined single limit of \$1,000,000 per occurrence. Company shall be named as an additional insured;

and to provide certificates of insurance showing the foregoing coverage, as well as any endorsements or other proper documentation showing and any change or cancellations in the coverage to the Company officer signing this agreement or to his or her authorized representative;

- (vii) to reimburse Company for any material, labor, supervisory and protective costs (including flagging) and related taxes and overhead expenses required or deemed necessary by Company because of the presence of either Licensees or Licensee Property on the Premises;
- (viii) to exercise special care and precautions to protect the Premises and equipment, machinery, rolling stock and other personal property and fixtures belonging to Company or otherwise located on the Premises (whether or not constituting Designated Property) and to avoid interference with Company's operations;
- (ix) to not create and not allow drainage conditions which would be adverse to the Premises or any surrounding areas;
- (x) to maintain a minimum clearance of fifteen feet (15') from the center line of the nearest track for any of the Licensee Property unless otherwise authorized in writing by Company;
- (xi) to refrain from the disposal or release of any trash, waste, and hazardous, dangerous or toxic waste, materials or substances on or adjacent to the Premises and to clean up or to pay Company for the cleanup of any such released trash, waste, materials or substances; and
- (xii) to restore the Premises and surrounding areas to its original condition or to a condition satisfactory to the Company officer signing this agreement or to his or her authorized representative (ordinary wear and tear to rolling stock and equipment excepted) upon termination of Licensees' presence on the Premises.

As a part of the consideration hereof, Principal further hereby agrees that Company shall mean not only Norfolk Southern Railway Company but also Norfolk Southern Corporation and any and all subsidiaries and affiliates of Norfolk Southern Railway Company or Norfolk Southern Corporation, and that all of Principal's indemnity commitments in this agreement in favor of Company also shall extend to and indemnify Norfolk Southern Corporation and any subsidiaries and affiliated companies of Norfolk Southern Railway Company or Norfolk Southern Corporation and its and/or their directors, officers, agents and employees.

It is expressly understood that the indemnification obligations set forth herein cover claims by Principal's employees, agents, independent contractors and other representatives, and Principal expressly waives any defense to or immunity from such indemnification obligations and/or any subrogation rights available under any applicable state constitutional provision, laws, rules or regulations, including, without limitation, the workers' compensation laws of any state. Specifically, (i) in the event that all or a portion of the Premises is located in the State of Ohio, the following provision shall be applicable: "Principal, with respect to the indemnification provisions contained herein, hereby expressly waives any defense or immunity granted or afforded it pursuant to Section 35, Article II of the Ohio Constitution and Section 4123.74 of the Ohio Revised Code"; and (ii) in the event that all or a portion of the Premises is located in the Commonwealth of Pennsylvania, the following provision shall be applicable: "Principal, with respect to the indemnification provisions contained herein, hereby expressly waives any defense or immunity granted or afforded it pursuant to the Pennsylvania Workers' Compensation Act, 77 P.S. 481".

This agreement shall be governed by the internal laws of the State of Michigan, without regard to otherwise applicable principles of conflicts of laws. If any of the foregoing provisions is held for any reason to be unlawful or unenforceable, the parties intend that only the specific words found to be unlawful or unenforceable be severed and deleted from this agreement and that the balance of this agreement remain a binding enforceable agreement to the fullest extent permitted by law.

This agreement may be amended only in a writing signed by authorized representatives of the parties.

Name of Principal NORFOLK SOUTHERN RAILWAY COMPANY

By: _____
Print or type name, & Signature:

By _____
Print or type name:

Title _____

Title Division Transportation Supt.

Date _____ 20____

Date _____, 20____

EXHIBIT F

QUITCLAIM DEED

THIS INDENTURE WITNESSETH, that the Grantor, NORFOLK SOUTHERN RAILWAY COMPANY, a corporation organized and existing under the laws of the Commonwealth of Virginia, having its principal office in Norfolk, Virginia, (hereinafter referred to as "Grantor") for and in consideration of the sum of ONE HUNDRED FORTY MILLION AND NO/100 DOLLARS (\$ 140,000,000.00) (Kalamazoo County - \$5,000,000, Calhoun County - \$10,000,000, Jackson County - \$16,000,000, Washtenaw - \$59,000,000, Wayne County - \$50,000,000) and other valuable consideration, and pursuant to authority given by the Board of Directors of said corporation, QUITCLAIMS, unto the MICHIGAN DEPARTMENT OF TRANSPORTATION , an instrumentality of government created pursuant to the laws of the State of Michigan (hereinafter referred to as "Grantee"), whose mailing address is 425 West Ottawa Street, PO Box 30050, Lansing, Michigan 48909, the following described Real Estate situated in the Counties of Wayne, Washtenaw, Jackson, Kalamazoo and Calhoun, State of Michigan, to-wit:

Insert approved LEGAL DESCRIPTION here

TOGETHER WITH all rights, title and interest of Grantor in and to any easements, drainage rights, licenses, privileges, adjacent streets, roads, alleys or rights of way, bridges, and all development rights, entitlements, licenses, permits, certificates of occupancy, consents and approvals whether governmental or otherwise, relating to the use, operation or maintenance of the property, and all improvements thereon, except for exclusions, reservations and covenants contained herein.

RESERVING unto Grantor, its successors and assigns, the following:

An exclusive, perpetual, irrevocable, assignable, divisible, licensable and transferable easement (the "Freight Easement") over, under, across and upon the property for all freight railroad purposes, including without limitation the right to operate over the existing improvements hereby transferred, as well as any future modifications thereto, and any other improvements made to the property; provided, however, that any assignment, division, license, or transfer of the Freight Easement (a) to any other entity (the "Assignee") shall not result in more than one freight operator operating on any segment of the property other than existing freight lessees and existing Trackage Rights tenants (which, for avoidance of doubt, prohibits the grant of any new Trackage Rights), and (b) to an Assignee other than a parent, subsidiary, or affiliate of Seller shall be subject to the consent of Purchaser, which consent shall not be unreasonably withheld or delayed. The rights hereby reserved pursuant to the Freight Easement are for the purpose of Grantor using the same for bridging its freight trains, from one end of the rail segment described in Exhibit A-1 to that certain Agreement for Purchase and Sale between Norfolk Southern Railway Company and the State of Michigan Department of Transportation dated October 3, 2011 (the "Agreement") to the other end of the same rail segment, connecting with other freight railroads, serving existing and future freight industries located along, adjacent and near the property, (it being agreed that Grantor shall have the right to have new turnouts installed in order to serve customers, which turnouts shall be designed cooperatively to mitigate the adverse impact of such turnouts on intercity passenger operations; and it also being agreed that existing turnouts shall not

be removed without the consent of Grantor, which consent shall not be withheld or delayed unreasonably) having connections made to the property to serve existing and future industries, and operating freight trains and other equipment over the property, but not including such ancillary passenger facilities such as passenger stations and side tracks leading only to passenger stations. As part of the Freight Easement rights hereby reserved, Grantor shall also have the right to the sole use (except in an emergency) for freight purposes of the tracks described as being dedicated to freight service as set forth in the Joint Operations Agreement, as defined in the Agreement.

An exclusive, perpetual, irrevocable, assignable, divisible, licensable and transferable easement over, under, across and upon the property for the purposes of constructing, accessing (ingress/egress), owning, repairing, renewing, replacing, installing, constructing, operating and maintaining new or existing communication, signal and fiber optic communications systems and appurtenant facilities and equipment and any other communication systems, including, without limitation, existing and new telecommunication and other towers ("Communication Facilities"); provided, however, that: Grantor or those claiming under Grantor shall not unduly interfere with Grantee's use of the property for passenger transportation purposes; if any changes and/or additions to the property require relocation of Communication Facilities, Grantor agrees that (a) as to existing Communication Facilities, Grantee shall pay for any such relocations; provided, however, Grantor agrees to exercise any rights Grantor may have to seek payment from a third party for such relocation, but Grantor does not warrant the outcome, and if the same is not paid by such third party, Grantee shall be responsible for the relocation costs; and (b) as to any future agreement for Communication Facilities,

Grantor shall use commercially reasonable efforts to include in such agreement a provision that requires the grantee or licensee to relocate the Communication Facilities of such party at the expense of parties other than the Grantee, provided that any such agreement shall require the licensee to relocate its Communication Facilities at the expense of parties other than the Grantee when such relocation is required to accommodate the operational needs of intercity passenger service; and Grantee shall have the rights to (a) use, at no additional cost to Grantee in the operation of Grantee's passenger operations any existing Communication Facilities belonging or otherwise under the control of Grantor and used in conjunction with Grantor's railroad operations on the property, (b) pursue, by itself or through third party contractors or licensees, the development, construction, operation, maintenance, repair, renewal and replacement of separate Communication Facilities over, under, across and upon the property as necessary or desirable for use in the operation of Grantee's passenger operations on the property or any other public purpose, and (c) upon request to Grantor whenever new Communication Facilities are being installed or existing Communication Facilities are being relocated upon the property, arrange to have Grantee's Communication Facilities co-located at Grantee's expense, provided that the co-location of such Communication Facilities can be reasonably accommodated.

An exclusive, perpetual, irrevocable, assignable, divisible, licensable and transferable non-terminable billboard license(s) upon the property for those billboards listed on Exhibit A-4 attached hereto as well as for new billboard sites for purposes of accessing (ingress/egress), owning, repairing, renewing, replacing, installing, constructing,

operating and maintaining such billboards and/or signboards and appurtenant facilities and equipment (including utility connections to service such billboards and/or signboards but that shall not unduly interfere with Grantee operations on the property) (the "Billboard Facilities") of Grantor or its grantees, lessees or licensees; provided, however, that: if Grantee requests the relocation of any Billboard Facilities, in order for the Grantee to construct any changes and/or additions on the property, Grantor will (a) use commercially reasonable efforts, within the limitations imposed by any applicable agreements governing Billboard Facilities, to work with any parties with an interest in such existing Billboard Facilities to find an acceptable, suitable and equally advantageous replacement location on other portions of the property and (b) exercise any rights under the applicable agreements to obtain payment for such relocation, provided that Grantor shall not be required to take a legal position that Grantor deems to be frivolous or unlikely to result in a payment for relocation costs; Grantee shall fully cooperate in such relocation efforts (including without limitation obtaining approval of any permits that may be required for such relocation) and, unless the cost is one which Grantor successfully requires be borne by a third party, Grantee will reimburse Grantor or the applicable Billboard Facility and/or signboard entity, as the case may be, all costs of such relocation; if despite such efforts a new acceptable, suitable and equally advantageous location for such billboards and/or signboards cannot be located, Grantee will promptly pay Grantor the sum Grantor is required to pay to the applicable Billboard Facility entity pursuant to Grantor's agreement with such entity for the permanent removal of any Billboard Facilities; if despite such efforts a new acceptable, suitable and equally advantageous location for such billboards and/or signboards cannot be located, Grantee

will promptly pay Grantor the sum Grantor is required to pay to the applicable Billboard Facility entity pursuant to Grantor's agreement with such entity for the permanent removal of any Billboard Facilities; and the exercise of the rights reserved hereunder by Grantor or those claiming under Grantor are not to unduly interfere with Grantee's use of the property for passenger transportation purposes, it being agreed that the existing billboards and signboards do not interfere with Grantee's use of the property for passenger transportation purposes.

An exclusive, perpetual, irrevocable, assignable, divisible, licensable and transferable reservation of all timber rights and also all mineral rights whether gaseous, liquid or solid including without limitation oil, gas, natural gas and coal in, over, across, upon and under the property as well as an exclusive, perpetual, irrevocable, assignable, divisible, licensable and transferable easement over, under, across and upon the property for the purposes of constructing, accessing (ingress/egress), owning, repairing, renewing, replacing, installing, constructing, operating and maintaining such mineral rights as well as new or existing facilities used for the purpose of removing such oil, gas and mineral rights in said property. The exercise of the rights reserved hereunder by Grantor or those claiming under Grantor is not to unduly interfere with Grantee's use of the property for passenger transportation purposes.

An exclusive, perpetual, irrevocable, assignable, divisible, licensable and transferable easement over, under, across and upon the property for the purposes of constructing, accessing (ingress/egress), owning, repairing, renewing, replacing, installing, constructing, operating and maintaining new or existing utility lines (including without

limitation those for water, sewer, electrical, gas or telecommunication lines, which are parallel to the main tracks on the property, as well as appurtenant facilities and equipment ("Utility Facilities"); provided, however, that: Grantor or those claiming under Grantor shall not to unduly interfere with Grantee's use of the property for passenger transportation purposes; if any changes and/or additions to the property require relocation of Utility Facilities, Grantor agrees that (a) as to existing Utility Facilities, Grantee shall pay for any such relocations; provided, however, Grantor agrees to exercise any rights Grantor may have to seek payment from a third party for such relocation, but Grantor does not warrant the outcome, and if the same is not paid for by such third party, Grantee shall be responsible for the relocation costs; and (b) as to any future agreement for Utility Facilities, Grantor shall use commercially reasonable efforts to include in such agreement a provision that requires the Grantee or licensee to relocate the Utility Facilities of such party at the expense of parties other than the Grantee, provided that any such agreement shall require the licensee to relocate its Utility Facilities at the expense of parties other than Grantee when such relocation is required to accommodate the operational needs of intercity passenger service; and Grantee shall have the rights to (a) use, at no additional cost to Grantee for the operation of Grantee's passenger operations, any existing Utility Facilities belonging or otherwise under the control of Grantor and used in conjunction with Grantor's operations on the property, (b) pursue, by itself or through third party contractors or licensees, the development, construction, operation, maintenance, repair, renewal and replacement of separate Utility Facilities over, under, across and upon the property as necessary or desirable for use in the operation of Grantee's passenger operations on the property or any other public purpose, and (c) upon request to Grantor

whenever new Utility Facilities are being installed or existing Utility Facilities are being relocated upon the property, arrange to have Grantee's Utility Facilities co-located at Grantee's expense, provided that the co-location of such Utility Facilities can be reasonably accommodated.

FURTHER RESERVING unto Grantor, its successors and assigns, an easement over all the land for six (6) months in which to remove any such rail, other track material, ties, switches, turnouts, signal systems and other similar improvements that are not affixed to the property but which are contained in piles of such rail-related material as Grantor wishes to remove. Upon the expiration of said six (6) month period, the said reserved easement will be extinguished, and if any of the items described in this paragraph remain on the land following the end of said six (6) month period, the title to the same shall automatically vest in Grantee without the requirement of any additional action.

EXCEPTING AND EXCLUDING therefrom, any such rail, other track material, ties, switches, turnouts, signal systems and other similar improvements that are not affixed to the property but which are contained in piles of such rail-related material; any other such non-affixed personal property including, without limitation, locomotives, railroad cars or other rail vehicles; and those other parcels as generally depicted on the attached valuation maps attached hereto as Exhibit A-3.

SUBJECT to general real estate taxes for the year of closing and subsequent years not yet due and payable; existing laws, orders and regulations, including applicable zoning laws and regulations; except as is otherwise provided in this deed, all tenancies, encumbrances, easements,

rights, trackage rights, conditions, reservations, leases, licenses, permits, privileges, agreements, third party agreements, covenants, conditions, restrictions, reservations, rights of re-entry and possibilities of reverter, whether or not of record or as may be apparent by an inspection or survey of the property and affect the property as of the execution date or the closing date; whatever rights the public may have to the use of any roads, alleys, bridge or streets on or crossing the property; streams, rivers, creeks and waterways passing under, across or through the property; all exclusions, reservations and covenants described in this deed, including specifically the Exhibit A-4 exclusions, Exhibit A-5 reservations and the Exhibit A-6 covenants; and any pipes, wires, poles, cables, culverts, drainage courses or systems, or other facilities on or crossing the property, together with the rights, if any, of persons entitled to maintain, repair, renew, replace, use or remove the same.

Grantee agrees, as a permanent covenant running with and touching the land, that neither Grantee, nor its operators, contractors, agents, licensees and permitted successors and assigns, except Grantor and its successors and assigns, shall use any of the property for any freight rail purposes.

TO HAVE AND TO HOLD said premises unto said Grantee, its successors and assigns.
forever.

IN WITNESS WHEREOF, said Grantor has caused these presents to be signed by its
Assistant Vice President- Real Estate and its corporate seal attested to by its Assistant Corporate
Secretary to be hereunto affixed, this _____ day of _____, A.D., 2011.

Signed, sealed and delivered
in presence of:

NORFOLK SOUTHERN RAILWAY COMPANY
By

Assistant Vice President-Real Estate

L.S. ATTEST:

Assistant Corporate Secretary

This instrument prepared by:
Linda V. Hill
General Attorney - Real Estate
Norfolk Southern Corporation
1200 Peachtree Street - 12th Floor
Atlanta, Georgia 30309-3592
ELS: Activity No.
Imanage # 854931v1
STATE OF GEORGIA)
)
COUNTY OF FULTON)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO
HEREBY CERTIFY. that _____ personally known to me to be the
Assistant Vice President -Real Estate of NORFOLK SOUTHERN RAILWAY COMPANY, a
corporation, and _____ personally known to me to be the Assistant
Corporate Secretary of said corporation, and personally known to me to be the same persons
whose names are subscribed to the foregoing instrument, appeared before me this day in person
and severally acknowledged that as such Assistant Vice President-Real Estate and Assistant
Corporate Secretary, they signed and delivered the said instrument as Assistant Vice President-
Real Estate and Assistant Corporate Secretary of said corporation, and caused the corporate seal
of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of

said corporation as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and seal this ____ day of _____, A.D., 2011.

Notary Public

My Commission expires

Exhibit G

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of this [] day of _____, 2012 (the "Assignment and Assumption Agreement"), is by and among Norfolk Southern Railway Company, a Virginia corporation ("Assignor") and the Michigan Department of Transportation ("Assignee"). Norfolk Southern Railway Company and the Michigan Department of Transportation are referred to individually here as a "Party" and collectively as the "Parties".

RECITALS:

WHEREAS, Assignor and Assignee have entered into that certain Agreement of Purchase and Sale dated September __, 2011 (the "Purchase and Sale Agreement"), whereby Assignor has agreed to sell to Assignee certain real property in Wayne, Washtenaw, Jackson, Calhoun, and Kalamazoo Counties, Michigan, which is more particularly described in the Purchase and Sale Agreement (the "Real Property"); and

WHEREAS, pursuant to the terms of the Purchase and Sale Agreement, Assignor has agreed to assign, and Assignee has agreed to assume, certain agreements pursuant to which third parties have rights with respect to the Real Property (the "Ancillary Agreements"); and

WHEREAS, Assignee desires to accept assignment of the Ancillary Agreements and the Assets, and to assume the Assumed Liabilities, but only on the terms and conditions contained herein.

NOW, THEREFORE, the Parties hereto, for and in consideration of the premises, the mutual covenants and agreements contained herein and in the Purchase and Sale Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, agree as follows:

Section 1. Assignments.

Subject to the terms of the Purchase and Sale Agreement, and for value received, Assignor does hereby transfer and assign unto Assignee, to the fullest extent that it lawfully may, all of Assignor's rights, titles and interests in those various Ancillary Agreements indicated on Exhibit A, attached hereto and made a part hereof; the instruments indicated on Exhibit A being those affecting the Real Property. Assignor further partially transfers and assigns unto Assignee, to the fullest extent that it lawfully may, the respective rights, titles and interests of Assignor, if any, in those various Ancillary Agreements indicated on Exhibit B, attached hereto and made a part hereof; the instruments indicated on Exhibit B being those affecting property only partially within the Real Property, it being the intent to transfer and assign only so much of the

instruments indicated on Exhibit B as affects the Real Property. Notwithstanding anything to the contrary in this Assignment and Assumption Agreement, Assignor withholds from assignment each and every agreement listed on Exhibit C hereto.

Section 2. Assumption.

Subject to the terms of the Transaction Agreement, Assignee does hereby accept and assume, to the extent of the interest hereby assigned, all of the rights, titles and interests of Assignor contained within the Ancillary Agreements (other than those listed on Exhibit C hereto), and agrees to pay, observe, perform and discharge the obligations under the Ancillary Agreements in accordance with their respective terms, as and when due.

Section 3. Erroneous Assignment.

It is the intent of Assignor to assign its interest in only those instruments affecting, and only to the extent that they affect, the Real Property. Should any instruments that do not affect the Real Property be included on the instruments provided herein to Assignee, notwithstanding anything to the contrary herein, this Assignment and Assumption Agreement shall be void and of no effect as to those instruments. Upon determination by either party that any instruments have been erroneously included in this Assignment and Assumption Agreement, the instruments shall be promptly returned to Assignor, if already in the custody of Assignee.

Section 4. After-Discovered Agreements.

The instruments listed on the exhibits hereto constitute all of such instruments known to Assignor affecting the Real Property. If subsequent to the effective date of this instrument, Assignor discovers any additional instruments which affect the Real Property, said instruments shall be automatically assigned as if included herein and Assignor shall send by certified mail copies of said instruments to Assignee.

Section 5. The Transaction Agreement.

This Assignment and Assumption Agreement is subject to the terms and conditions of the Purchase and Sale Agreement. Nothing herein shall be deemed to amend, modify, alter, expand or diminish the terms and conditions of the Purchase and Sale Agreement, including the covenants, representations, warranties and indemnity obligations contained therein.

Section 6. Governing Law.

The laws of the state of Michigan shall govern the validity of this Assignment and Assumption Agreement, the construction of its terms, and the interpretation of the rights and duties arising hereunder, without regard to the laws that might otherwise govern under the applicable principles of conflicts of law thereof.

Section 7. Counterparts.

This Assignment and Assumption Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 8. Successors and Assigns.

This Assignment and Assumption Agreement shall be binding upon and inure solely to the benefit of each Party hereto and their respective successors and permitted assigns, and nothing in this Assignment and Assumption Agreement, express or implied, is intended to or shall confer upon any other person any rights, interests, benefits or remedies of any nature whatsoever under or by reason of this Assignment and Assumption Agreement.

Section 9. Further Assurances.

Assignor shall, from time to time upon the reasonable request of Assignee, execute and deliver all such further documents and instruments, and take all such further acts as shall be reasonably necessary or desirable to give full effect to the intent and meaning of this Agreement.

The effective date of this instrument is []

Exhibit A

Exhibit B

Exhibit C

Exhibit H

Known Remediation Sites

Botsford Yard, listed on the Michigan Department of Environmental Quality Part 201 list of sites as Site ID #39000009.

[remainder of page intentionally left blank]

Exhibit I

Trackage Rights Agreements

Agreement dated August 16, 2010 between Jackson & Lansing Railroad Company and Norfolk Southern Railway Company governing trackage rights between milepost MH 75.67 and milepost MH 72.73

Agreement dated September 16, 2010 between Jackson & Lansing Railroad Company and Norfolk Southern Railway Company assigning certain trackage rights and joint facility agreements

Agreement dated March 3, 2009 between Grand Elk Railroad, L.L.C. and Norfolk Southern Railway Company governing trackage rights between the southeast quadrant connection between the Michigan Main Line and the BO Secondary and milepost MH 142.6 on the Michigan Main Line

Agreement dated September 14, 1979 between Grand Trunk Western Railroad Company and Consolidated Rail Corporation governing trackage rights between Michigan Avenue and Washington Avenue in Battle Creek, Michigan

Agreement dated July 31, 1982 between Consolidated Rail Corporation and Grand Trunk Western Railroad Company governing trackage rights in Kalamazoo, Michigan

Agreement dated September 20, 1985 between Consolidated Rail Corporation and Checker Motors Corporation governing trackage rights in Kalamazoo, Michigan

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